THE OCCUPIER .. .. p. 699
BOOK-KEEPING FOR SOLICITORS .. p. 699

The Solicitors' Journal

[Established 1857.] [Registered as a Newspaper.]

VOL. LXXVIII. No. 40 [Pages 697 to 720]. **Saturday, October 6, 1934.** Published Weekly. Price One Shilling.

FLOWERDEW & CO.,
LIMITED.
Law Writing, Typing and Stationery.
PARCHMENT AND SUBSTITUTE.
DEED PRINTING AND LITHOGRAPHY.
227-228, STRAND (*Facing Law Courts*).
'Phone: Central 1642 (4 lines).
Telegrams: "Flowerdew, London."
City Offices:—11, POULTRY, E.C.2.

CANCER RELIEF
"A VERITABLE GOD-SEND."
Thus do many of the needy victims of a cruel affliction describe the help we have been enabled to give them. The charitably disposed are invited to consider the work of the N.S.C.R. for poor sufferers. Allowances and comforts are provided for nursing in patients' own homes.
Booklet free on request.
NATIONAL SOCIETY FOR CANCER RELIEF,
15, Ranelagh Road, London, S.W.1. Victoria 4360.

Established 1836. Telephone: Holborn 0273.
GENERAL REVERSIONARY
AND INVESTMENT CO.
Assets £1,000,000.
Reversions and Life Interests Purchased or Loans Granted thereon.
Apply to the Actuary, 59, Carey Street, W.C.2.

THE
ROYAL EXCHANGE ASSURANCE
Incorporated A.D. 1720
Trustee Service
All the duties of Executor and Trustee undertaken. Fees are extremely moderate and free booklet should be obtained from the General Manager, Head Office
ROYAL EXCHANGE
LONDON, E.C.3.

For
ADMINISTRATION
RECEIVERSHIP
CUSTOMS
FIDELITY GUARANTEES
} BONDS
THE
OCEAN
Accident & Guarantee Corporation Limited,
36-44, MOORGATE, LONDON, E.C.2.
Indemnities re:
LOST DOCUMENTS,
MISSING BENEFICIARIES,
DEFECTS IN TITLE,
FORGED TRANSFERS.
Other classes of business transacted, e.g.,
Accident, Burglary, Employers' Liability, Fire, Motor, &c., &c.

ESTABLISHED 1869.
LONDON GUARANTEE & ACCIDENT COY. LTD.,
FOR
COURT BONDS
OF EVERY DESCRIPTION.
Special Indemnities in Connection with Missing Beneficiaries, Lost Documents, Defects in Title, etc.
FIDELITY GUARANTEES.
Head Office—
4-5, KING WILLIAM STREET, LONDON, E.C.4.
Telephone:—
Mansion House 9876.

THE GUARANTEE SOCIETY LIMITED
THE OFFICE WHICH IN THE YEAR 1840 FOUNDED PUBLIC SURETYSHIP
Administration Bonds
ON FAVOURABLE TERMS.
Obligation to Private Sureties Avoided and the Interests of Beneficiaries Assured by a Perpetual Surety.
Head Office: SUN COURT, CORNHILL, LONDON, E.C.3.
Telephone: Avenue 4071.
BRANCHES IN MOST PRINCIPAL TOWNS.
Court Bonds and Indemnities.

ECONOMISE *and join the*
LAW NOTES LENDING LIBRARY
THE LATEST TEXT BOOKS ON LOAN FOR PRACTITIONERS AND STUDENTS.
25-26, Chancery Lane, London, W.C.2.

ADVERTISEMENTS OF REGISTERED ANNUAL SUBSCRIBERS ARE INSERTED FREE OF CHARGE UNDER APPOINTMENTS VACANT, APPOINTMENTS WANTED, PRACTICES AND PARTNERSHIPS, AND ARTICLED CLERKS.

NOTICE TO SUBSCRIBERS.

The Manager would appreciate the courtesy if Subscribers would kindly notify him **at once** when Appointments have been filled or obtained.

When replying to Advertisers please mention "The Solicitors' Journal."

PUBLIC NOTICES.

THE CORPORATION OF ACCOUNTANTS.

(INCORPORATED 1891.)

CORPORATE ACCOUNTANTS' EXAMINATIONS.

The next examinations of the Corporation of Accountants—Preliminary, Intermediate and Final—will be held in Glasgow, Aberdeen, Edinburgh, London, Birmingham, Bristol, Hull, Leeds, Leicester, Liverpool, Manchester, Newcastle-upon-Tyne, Sheffield, Belfast, Dublin, Cardiff, etc., on Tuesday, Wednesday and Thursday, the 11th, 12th and 13th December, 1934. These examinations are open to both men and women.

Candidates wishing to present themselves must make application before the 14th November, 1934. Full particulars and forms may be obtained from the registered office.

J. STIRLING BROWN, C.R.A.,
Secretary.

Registered Office :—
121, West George-street,
Glasgow, C.2.

APPOINTMENTS VACANT.

MANAGING Clerk Wanted, must be thoroughly experienced common law and company litigation, and able to work on own initiative; good salary and prospects for energetic capable man; investment of some capital desirable.—Box 4275, Solicitors' Journal, 29, Breams-buildings, E.C.4.

MANAGING Clerk with all-round experience required by solicitors (West End); able to take entire control of small office, chiefly family business, conveyancing and litigation; permanency to capable man.—Box 4283, Solicitors' Journal, 29, Breams-buildings, E.C.4.

LAW.—Required by City firm of Solicitors an admitted man (University qualifications preferred), between 30 and 40 years of age, to take charge of Commercial, conveyancing and company department. Must be sound lawyer. Liberal salary and excellent prospects to one of proved ability and experience.—Write stating age and full particulars, Box 4288, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR wanted to act privately on staff of firm of Builders. Conveyancing and arranging matters, etc., in Midlands and London. State wages and particulars to Box 4293, Solicitors' Journal, 29, Breams-buildings, E.C.4.

APPOINTMENTS WANTED.

SOLICITORS' attention is called to Gibson and Weldon's Employment Register of former pupils. No fees charged.—Apply Gibson & Weldon, Law Tutors, 27, Chancery-lane, W.C.2.

SOLICITOR (25), general experience, including advocacy, desires appointment as assistant, with prospects of partnership; capital available.—Box 4277, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR (30), Honours, First-class Intermediate, public school, present position complete responsibility in general practice, especially conveyancing, probate, private company work, desires post (with prospects preferred).—Box 4289, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR (41), B.A. Cantab., admitted January, 1921, current practising certificate, desires position with conveyancing firm in or near London, or will undertake temporary or part-time post. Salary by arrangement.—Box 4238, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR (28), admitted 3½ years, requires post preferably Midlands and with prospects of partnership. Experienced Conveyancing, Probate, Common Law, Divorce, Litigation, Advocacy and Costs, at present Managing Clerk with Surrey firm. Moderate salary, by arrangement, capital available if prospects of partnership.—Box 4287, Solicitors' Journal, 29, Breams-buildings, E.C.4.

TO SOLICITORS, Etc.—Young lady, convent education, desires first post; secretarial, shorthand, typing, French (in Surrey); post more essential than salary.—Box 4290, Solicitors' Journal, 29, Breams-buildings, E.C.4.

POST desired by Solicitor, aged 22, in busy London office; public school; capable of acting with only slight supervision; experienced conveyancing, litigation, probate and divorce; accustomed to interviewing clients.—Box 4282, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR, Final 1933, aged 30, articled good country office, Kent, at present holding temporary position first-rate Oxford office, sound knowledge Conveyancing, Probate and general work of country practices, etc., would undertake Advocacy, seeks post as Assistant Solicitor with or without a view to Partnership in fair-sized Country office (not London). Accustomed to work under slight supervision. Public School and Oxford M.A. (Honours), man of good family, fluent French. Salary by arrangement.—Box 4292, Solicitors' Journal, 29, Breams-buildings, E.C.4.

EXPERIENCED Law Costs Draftsman and Book-keeper (Kains' System) requires position; able to settle costs all divisions, and for taxation; large experience in attending taxations; over nine years with present firm; excellent references; moderate salary.—Box 4278, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR (24), Public School, admitted 1932, Honours, five years' articles and subsequent experience in town and country practice; experienced in Conveyancing, Probate, trusts and general work; accustomed to interviewing; able to act with only slight supervision, requires post, preferably in South of England or Midlands. Can become Notary Public. Salary £225.—Box 4268, Solicitors' Journal, 29, Breams-buildings, E.C.4.

EXPERIENCED Clerk (46), now Cashier Book-keeper and Costs Clerk, London; similar post preferred, London or country, where his litigation and conveyancing experience could be utilised. Highest credentials; small salary.—Box 4265, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR, admitted January, 1931, Public School and LL.B. (Hons.), desires clerkship in London; experience with first-class conveyancing and company firms, sound advocate, excellent references; salary by arrangement.—Box 4286, Solicitors' Journal, 29, Breams-buildings, E.C.4.

EX-OFFICERS.

THE Proprietors of The Solicitors' Journal have placed this space at the disposal of THE BRITISH LEGION, OFFICERS' ASSOCIATION, EMPLOYMENT BUREAU, 20, Grosvenor-gardens, S.W.1 (Telephone: Sloane 2315) to whom all replies should be addressed, quoting number of advertisement, date of insertion, and the name of this paper.

EX-OFFICER, M.C., urgently requires berth, either as Traveller for or Manager of School Outfit Dept.; long experience; excellent refs. Dis. 434.

MECHANICAL and Civil Engineer, last employer 8 years' shop practice, Drawing Office, Testing, Inspection materials to Air Ministry; spec. construction of plant; control labour and office staff; excellent refs. 15860.

EX-OFFICER, Married, requires employment, 14 years' Canadian Wallpaper Manufacturers experience; expert on colours, accept any situation; 20 years' refs.; active health and general knowledge good, adaptable and trustworthy. 15768.

EX-ACCOUNTANT Officer, married, capable correspondent and confidential secretary, urgently desires employment any capacity; wide commercial and banking experience; last position Secretary Public Company (now in voluntary liquidation); highest refs. Dis. 353.

EX-OFFICER, late R.A.F., 14 years' experience as Works Manager, expert knowledge castings and pattern-making, also experience in general Engineering estimating and costings. 12503.

V.-C. CAVALRY Officer, 42, Public School, University, desires post; competent Private Secretary, good Horsemaster, knowledge Estate work, Stock, trustworthy. 15908.

PRACTICES AND PARTNERSHIPS.

SOLICITOR (West End) with established practice (over 20 years), chiefly family and conveyancing, seeks partnership or amalgamation with a view to enlarging and also reducing overhead expenses.—Box 4284, Solicitors' Journal, 29, Breams-buildings, E.C.4.

MANCHESTER Solicitors with general practice desire to purchase succession to similar practice in Manchester or adjacent town; replies treated in strictest confidence.—Box 4291, Solicitors' Journal, 29, Breams-buildings, E.C.4.

SOLICITOR, 30, partner in good North Country practice, with wide experience in conveyancing, probate and trust work, is looking for a similar situation in the Midlands or South; London experience; good class family practice preferred, but not essential.—Apply Box 4285, Solicitors' Journal, 29, Breams-buildings E.C.4.

OFFICES.

TO SOLICITORS requiring offices. A particularly fine upper part to Let in a beautiful house in Grosvenor-street, W.1. Electric lift. Part would form excellent residential pied-a-terre for partner if desired.—Apply, Jackson, Stops & Staff, 14, Curzon-street, W.1. Grosvenor 1811.

MORTGAGE FUNDS, ETC.

TRUST FUND of £200,000 available in one or more sums for advance on first-class securities.—Particulars to H. E. Foster & Cranfield, 6, Poultry, London, E.C.2.

MORTGAGE SECURITIES REQUIRED for Funds of £500,000 in lots of £20,000 upwards.—"C.H.," c/o Streets, 6, Gracechurch-street, E.C.3.

MORTGAGE FUNDS.—Several funds available for Freehold Securities. Various sums, all AWAITING IMMEDIATE INVESTMENT.—Particulars to the Surveyors, White, Druce & Brown, 6, Hanover-square, W.1.

BOOKS AND PERIODICALS.

LAW REPORTS (Q.B.D., Ch. D., A. C. and P.D. volumes) for the years 1886 to 1894 inclusive, and 1907, for sale, second-hand, bound half calf; no reasonable offer refused.—Box 4276, Solicitors' Journal, 29, Breams-buildings, E.C.4.

CERTIFICATED BAILIFFS.

P. A. NEALE & CO., M.C.B.A.,
CERTIFICATED BAILIFFS.

By appointment to—
The Bethnal Green Borough Council.
The Enfield Urban District Council.
The Friern Barnet Urban District Council.

1, BLOOMSBURY STREET, W.C.1
(one door from New Oxford-street).
MUSEUM 3162 (3 lines).

ENQUIRIES are invited without obligation for procedure under LAW OF DISTRESS AMENDMENT ACT.
BAILIFFS ALWAYS AVAILABLE.

LEGAL TRANSLATIONS.

STANDARD TRANSLATION BUREAU

Principal: Mr. EDOUARD LEROUX, C.E.T.D., F.I.L. Thirty years' experience, 14 years as Legal Translator. Late Official Interpreter to Provost Marshal and Court Martial at Headquarters of American Expeditionary Forces.

Interpretations and Sworn Translations for the Law Courts.
310, HIGH HOLBORN, W.C.1 (Corner of Chancery-lane).
HOLborn 5654.

The Solicitors' Journal

VOL. LXXVIII. **Saturday, October 6, 1934.** No. 40

Current Topics : The New Lord Justice — Sir Oswald Simpkin — Overcrowding—The Report of the Board of Control—Notional Assessment—The Coal Trade 1933 .. 697
The Occupier 699
Book-keeping for Solicitors—II .. 699
Company Law and Practice 700
A Conveyancer's Diary 701
Landlord and Tenant Notebook .. 702
Obituary 703
Our County Court Letter 703
To-day and Yesterday 704
The Law Society at Newcastle-on-Tyne 705
Legal Notes and News 720
Court Papers 720
Stock Exchange Prices of certain Trustee Securities 720

Current Topics.

The New Lord Justice.

ALTHOUGH the appointment of Mr. Justice ROCHE to fill the vacancy in the Court of Appeal created by the lamented death of Lord Justice SCRUTTON was regarded as a possibility by those who love to speculate on such matters, most of them were "plumping" for other candidates, and the result is to prove once again the wisdom of the old saying, "Don't prophesy unless you know." Mr. Justice ROCHE has well earned his promotion; and he will certainly bring to the performance of his new duties a profound acquaintance with all branches of mercantile law—in this resembling his predecessor. While at the Bar he was one of the most forceful leaders in the Commercial Court in the days when it attracted many notable advocates, in this following the steps of JOSEPH WALTON, HAMILTON, SCRUTTON and others who could illuminate even such prosaic documents as charter-parties and bills of lading. We have spoken of Mr. Justice ROCHE'S "promotion," and so it is in the matter of dignity, for each Lord Justice is sworn of the Privy Council and is thus entitled to the designation "Right Honourable," but a puisne who goes to the Court of Appeal gains nothing in salary; as A. L. SMITH said, when congratulated on being moved to the appellate tribunal: "No more wages, you know." The title "Lord Justice" in the legal sphere is comparatively modern. Lords Justices of the Court of Appeal in Chancery were first appointed in 1851 when Sir JAMES LEWIS KNIGHT-BRUCE and Sir ROBERT MONSEY ROLFE (afterwards Lord CRANWORTH) were given this title. Later, under the Judicature Acts, there were Appellate Judges styled "Justices of Appeal," but this was subsequently dropped and the more honorific title "Lords Justices" substituted.

Sir Oswald Simpkin.

THE retirement of Sir OSWALD SIMPKIN, K.C.B., C.B.E., at the age of fifty-five from the office of Public Trustee will be received, particularly by those for whom he has acted since his appointment in 1919, with very real regret, which is not lessened by the fact that the cause which led him to tender his resignation was severe and persistent ill-health. The magnitude of the work during his period of office may be gauged by the fact that at present some 18,000 wills are under administration, and that, in addition to landed property of the estimated value of £50,000, the nominal capital value of the funds held is about £215,000,000. Since 1908, when the office was created, 31,000 wills, with an aggregate value of over £350,000,000, have been administered. Sir OSWALD is succeeded by Mr. H. E. FASS, C.B., O.B.E., a Principal Assistant Secretary to the Treasury, who was called to the Bar in 1904, entered the Board of Education in 1909 and went to the Treasury in 1915.

Overcrowding.

A POLICY to eliminate overcrowding with its attendant evils is the logical sequel to slum-clearance. In a recent speech before the Housing Committee, Plymouth, the Minister of Health, Sir HILTON YOUNG, outlined the principal features of the new Bill dealing with the subject. The problem of elimination involves a definition of overcrowding and, besides its suppression, the provision of alternative accommodation, financial assistance and its prevention in future—overcrowding being a recognised precursor of the slum. In addition to the provision of sufficient space, the separation of the sexes over ten years of age is contemplated, as also are the requirements of the increasing family and growing children. After a fixed date it will be an offence to accommodate persons in a house in excess of the legal standard—this innovation in the law would, the Minister was confident, have the support of public opinion. The re-development of congested inner areas in the form of well-planned and well-arranged modern flats is a feature of the new scheme with its concomitant—the vesting of adequate powers in the housing authorities to acquire and re-develop areas of this kind. Additional powers will be given also to recondition dwellings which can be made fit to live in. Subject to the provisions of the Housing Act, 1930, relating to unfit houses, the new Bill will provide compensation to owners of property acquired under the new powers on the basis of market value. Financial assistance will take the form of an Exchequer subsidy for a term of years for each dwelling provided to reduce overcrowding and of a contribution from the rates. In general, such assistance is to be given that the task of the housing authority should not be an impossible one. The present dividing into separate compartments of contributions under various Acts is to give way to pooling of all contributions in a single housing account. Local authorities will be empowered to transfer their wage-earners' dwellings to management commissioners, and it is proposed that public utility societies should be in a position, by agreement with the housing authority, to take over and carry out any part of the work of re-development, reconditioning, or slum clearance. A housing council to advise the Ministry is also projected. The present low building costs and low rates of interest render the present time opportune for the furtherance of the scheme.

The Report of the Board of Control.

UNDER the Mental Treatment Act, 1930, facilities were provided for treatment without certification of mental sickness and the voluntary admission of mental patients into institutions approved by the Board of Control. From the passing of the Act asylums provided by local authorities were to be referred to as "mental hospitals," and the word "lunatic" was to cease to be used generally in relation to persons of unsound mind. That the hopes born of this new outlook on

mental treatment were not unfounded is shown in the Twentieth Annual Report of the Board of Control (for the year 1933), which was published on 27th September. On 1st January, 1934, the number of persons suffering from mental disorder, including voluntary, temporary and certified patients notified as under care in England and Wales, was 150,266, an increase of 1,491. The average annual increase for the five years ended 1st January, 1934, was 1,636, but it is explained that the increase does not necessarily show the general incidence of mental disorder, but merely the excess of the admissions over the combined deaths and discharges. The total of voluntary and uncertified admissions to public mental hospitals (excluding the Maudsley Hospital) continues to show an increase, the number for 1933 being 2,961, as against 2,295 in 1932. Actually only one-fifth of the temporary admissions, according to the Board of Control, need ultimately be certified, and unfortunately the total temporary admissions in the rate-aided class fell far short of the proportion among private patients. Had the proportions been the same, the number in the rate-aided class would have been approximately 3,280 instead of an actual total of 298. The opinion of the Board is that the non-volitional paying patient has about eleven times as good a chance of admission without certification as the rate-aided patient. This is an unhappy state of affairs, but steady progress has been made in providing institutional accommodation, and 2,254 new beds were provided in certified institutions during 1933. That the stigma of certification should attach even to one person who is suffering from an apparently mental disorder, the basis of which is entirely physical, is a blot on modern methods of mental treatment, and equal opportunities should be given to both poor and rich to use the necessary facilities afforded by the Mental Treatment Act, 1913. Modern research shows that the proportion of mental patients whose trouble has a physical and curable basis is remarkably high, and in a great number of cases nowadays it seems that doctors can echo Shakespeare's words, "if this be madness, why there's method in it." Every effort should be made to extend the benefits provided by the Act.

Notional Assessment.

A DIFFICULT and interesting point of construction was decided by the Court of Appeal, which upheld a judgment of FINLAY, J., in *Simpson (Inspector of Taxes)* v. *Grange Trust Ltd.* (1934), 151 L.T.R. 224. Section 33, sub-s. (1) of the Income Tax Act, 1918, provides: "Where . . . any company whose business consists mainly in the making of investments and the principal part of whose income is derived therefrom . . . , claims and proves to the satisfaction of the Special Commissioners that for any year of assessment it has been charged to tax by deduction or otherwise, and has not been charged in respect of its profits in accordance with the rules applicable to Case I of Schedule D, the company shall be entitled to repayment of so much of the tax paid by it as is equal to the amount of the tax on any sums disbursed as expenses of management (including commissions) for that year." The dispute in the case just mentioned related to the ambit of a proviso to the above sub-section which enacts that "(*a*) relief shall not be given under this section so as to make the tax paid by the company . . . less than the tax which would have been paid if the profits had been charged in accordance with the said rules." The company claimed repayment of £573 10s., being tax at 5s. in the £ on the management expenses for the year ended 5th April, 1932, but the Crown resisted this claim on the ground that the proviso applied to all companies seeking relief under the sub-section aforesaid. The amount paid by deduction and direct assessment was in fact less than what would have been paid under the rules applicable to Case I of Sched. D by some £5,900. It is well established that while there is no option between schedules (see *Fry* v. *Salisbury House Estates Ltd.* [1930] A.C. 432, 446), the Crown can in appropriate circumstances choose under which case of Sched. D a taxable subject will be charged: see *Liverpool and London and Globe Insurance Co.* v. *Bennett* [1912] 2 K.B. 41. Thus, with regard to s. 33, *supra*, as there are cases in which an option exists relative to the application of Case I or another of the cases under the schedule, it "becomes easy, or comparatively easy," to use the words of Lord HANWORTH, M.R., "to construe the proviso (*a*) because then you are able to consider the hypothesis in the last portion of the proviso, if the profits had been charged in accordance with the said rules, namely, the rules of Case I, that is, in a case in which that could be done." But this was precisely what could not be done in the present case, the company being admittedly not assessable under Case I and the argument of the Crown that there could be a notional assessment being negatived. As Lord SUMNER said in *Ormond Investment Co. Ltd* v. *Betts* [1925] A.C. 143: "The Crown does not tax by analogy, but by statute." To quote the learned Master of the Rolls in the present case: "You must take the words of the statute as they are, and you cannot bring in, however appropriate you may think them, some other rules, or adopt a system as you would prefer, so as to try and cover the case which is before you," and again "I think that the idea of a notional assessment is no longer tenable." The decision in *The Rosyth Building and Estates Co. Ltd.* v. *Rogers* [1921] S.C. 372; 8 Tax Cas. 11, that proviso (*a*) of s. 33, sub-s. (1) can only be applied to the claim of a company, the profits of which the Crown is entitled to charge under Case I of Sched. D, is thus shown to be good law; this part of the decision remaining unaffected by observations made on the case in *Fry* v. *Salisbury House Estates*, *supra*. The appeal against the company's claim for repayment in the circumstances outlined thus failed.

The Coal Trade 1933.

THE recently issued report of the Parliamentary Secretary to the Mines Department relating to coal-mining during 1933 indicates that the total output was slightly less than during the previous twelve months, while there was a small but definite improvement during the second half of the year. Exports show a small improvement, and revenue exceeded expenditure by a small margin. Wages and prices were substantially as in 1932, though the general level of the latter was lower. Exchange restrictions and measures relating to the control of imports were deleterious factors with regard to the export trade during 1933, but various trade agreements concluded during the year had a beneficial effect upon trade with Germany, Norway, Sweden, Denmark, Iceland, Finland and Argentina. With regard to amalgamations, six schemes involving twenty-two pits at which nearly 20,000 persons are normally employed were completed during the year. The relatively small progress in this direction is indicated by the fact that, since 1926, thirty-eight schemes (reduced by subsequent amalgamations to thirty-one) affecting 369 pits or levels have been carried through. The movement directed towards the production of motor spirit from coal at home received a great impetus from the decision of Imperial Chemical Industries Limited to erect at Billingham plant designed for the output of thirty million gallons annually. A hydrogenation scheme even of this magnitude will have little effect upon the amount of motor fuel imported, which reached the figure of about 1,141,500,000 gallons in the year under review, but a successful application of the principle should lead to others which, besides creating a new market for coal, would enable a substantial proportion of the motor spirit used in this country to be produced at home. According to the annual report of the Chief Inspector of Mines for the same year, 820 persons lost their lives at mines under the Coal Mines Act, 1911, and 122,419 were injured. The death-rate has fallen in each decennial period since 1873, averaging per 1,000 persons per annum 2·24 between 1873 and 1882 and 1·04 between 1923 and 1933 with 1926 omitted.

The Occupier.

QUESTIONS of occupancy usually arise in rating cases but not exclusively. In the recent case of *Re Garland* [1934] 1 Ch. 620, the matter was considered in relation to a will which gave the testator's widow any house of which he was owner and occupier at the time of his death.

"It is not easy," Lush, J., said in *Reg.* v. *Assessment Committee of St. Pancras* (1877), 2 Q.B.D. 581, "to give an accurate and exhaustive definition of the word 'occupier.' 'Occupation' includes possession as its primary element, but also includes something more. Legal possession does not of itself constitute an occupation. The owner of a vacant house is in possession, and may maintain trespass against anyone who invades it, but as long as he leaves it vacant he is not rateable for it as an occupier. If, however, he furnishes it and keeps it ready for habitation whenever he pleases to go in, he is an occupier, though he may not reside in it one day in the year." The case in which the foregoing statement was made related to advertisement hoardings attached to rateable hereditaments, in one case to a dilapidated property of which the owner was attempting to dispose, in the other to an outside wall fronting a property being re-built and to scaffold poles. The licence to erect the hoardings were thus temporary and their removal would not have involved any practical disturbance of the ground. It was held that the hoardings were not rateable as "advertising stations." Mellor, J., said: "We must, before we can come to a conclusion in favour of rateability, see that there is an occupation of a permanent character and not merely a permissive licence to use the premises in the nature of an easement." The appellant was not liable to pay rates because the owner of the premises in the present instance did not intend to part with the exclusive occupation of them. Lush, J., referred to the "kind of occupation" which the Act —the Valuation (Metropolis) Act, 1869—contemplated and that was "permanence." A transient, temporary holding of land was not enough to make the holding rateable.

The placing or leaving of furniture upon premises intended for habitation has an important bearing upon our problem. Thus, in *Staunton* v. *Powell*, 15 W.R. 362, where furniture was left in a house put up to let by the owner, Christian, J., said: "If a man leaves furniture in a house, or sends it to a house, the presumption is in favour of the *animus revertendi*, or *habitandi*." It is the *animus revertendi* or *habitandi* which is the important factor and that in light of which articles left on the premises or to be used in connection therewith are to be considered. "In order to ascertain" [whether a subject is rateable], Blackburn, J., said in *Allan* v. *Overseers of Liverpool*, L.R., 9 Q.B. 180, "we must see what was the intention of the parties." Thus, in *Gage* v. *Wren*, 87 L.T. 271, the removal of the furniture, except a few tenant's fixtures and fitted mats, from a boarding-house which traded only for a few months annually did not prevent the property from being rated for the year in the light of the intention to reopen for the season. The importance of intention is again emphasised in *R.* v. *Melladew* [1907] 1 K.B. 192. In this case a warehouse was held to be rateable notwithstanding the removal of the gear and the cutting off of the water on its closing, though both could have been readily restored. Collins, M.R., said that in dealing with the question of liability to pay rates, the occupation necessarily varied with the nature of the subject-matter. "The acts," the learned Master of the Rolls continued, "necessary to establish occupancy of a dwelling-house may be very different from those which might be regarded to establish occupation of a non-habitable hereditament. It is, I think, clear from a comparison of many authorities that the intention of the alleged occupier in respect of the hereditament is a governing factor in determining the question whether rateable occupancy has been established."

Before considering the recent case, mention should be made of the distinction between the occupancy of land and houses expressed by Lord Atkinson in *Liverpool Corporation* v. *Chorley Union Assessment Committee, etc.* [1913] A.C. 197, in the following terms: "In one sense a house is merely land with the bricks, mortar, and other building materials of which the house is composed resting upon it, and in that sense there would be no difference in the legal nature of the hereditament—whether these materials were heaped together upon the ground in an unformed mass or were built and fashioned into a house. The word 'land' would include the site and the superincumbent materials in both cases. This, however, is plainly not the sense in which the word 'house' is used in the statute [43 Eliz. c. 2], since it is mentioned as a separate and different kind of property from land. When the statute, therefore, enacts that the occupier of a house shall be rated, it must mean that the person to be rated shall occupy the house *as a house;* that is, he shall use the house for the purpose of living in it, or sojourning in it, or working in it, keeping animals in it, storing other chattels in it, or using it for some such other purpose as houses may reasonably be devoted to."

By the will considered in *Re Garland, supra*, the testator gave "any house of which I may at the time of my death be the owner and occupier to my wife absolutely." The testator bought the house in July, 1930, but never lived in it, having been removed to Bethlem Royal Hospital about two months later, but not before the house had been furnished. The house had been occupied by the wife and subsequently sold by the executors. In the course of his judgment, Bennett, J., said: "The house was furnished in August, 1930, and therefore until the time when the testator died it was ready for the testator to go into whenever he recovered. I think that on these facts, having regard to the opinion given by Lush, J. [quoted at outset of the present article], I am able to come to the conclusion that the testator was not only the owner of the house in question but also the occupier." The widow was, therefore, held to be entitled to the proceeds of sale.

Book-keeping for Solicitors.

II.

IT is outside the province of this journal to attempt to expound the theory and practice of double-entry book-keeping. Nor, for that matter, is it necessary to do so, for every solicitor at the present time is examined in the principles. For this reason, therefore, we will content ourselves merely by saying that the double-entry system has for its basis the inflexible rule that each item is made the subject of two separate entries, one a debit entry and the other a credit entry, the process of entering one item from another being known as "posting." The original entry is made in a book of prime entry, and the cash book, which we described in our last article, is one of such books. The others will be described in due course.

Before continuing further, it will be as well to explain that a system of book-keeping is dependent for its simplicity or otherwise on the purpose for which it is required. The system which has for its basis merely a cash book, is a system of single entry book-keeping, and it suffers many serious limitations, not the least of which is the impossibility of detecting readily mere arithmetical errors. The system which we propose to explain now is not claimed to be either the best or the most suitable for every type of practice, but it is one that is simple in operation and has been in use in many solicitors' offices for years, and has given very satisfactory results.

It will be as well, at the outset, to deal briefly with the process of recording the items which form the basis of solicitors' bills. These will be made up of items in respect of professional services, and disbursements which the solicitor has been obliged to make on behalf of his client, for example, in respect

of counsel's fees, court fees, and similar expenses. In short, those items which are properly included in a bill of costs as distinct from those items, like estate duty, which should be included in a cash account. The latter type of payments will usually, although not always, be made out of moneys which the solicitor has in hand for his client, whilst the former will normally have to be advanced by the solicitor out of his own moneys.

It will be found advantageous to adopt a system of recording the work done on draft entry sheets, that is, single sheets of paper having two cash columns on the right-hand side, one for professional charges and one for disbursements, and a column for the date on the left-hand side. Each morning the previous day's work should be dictated by the principal and managing clerks, and typed or written on to separate sheets headed with the name of the client and the matter. These sheets should then be filed alphabetically in order of client and matter. Periodically, the clients' disbursements are entered on the sheets, and the result is a draft bill which contains all the material necessary for compiling a bill of costs for taxation or delivery to the client. It is essential that a rule be laid down and consistently followed with regard to the recording of the work done, for any slackness is likely to result in serious loss of profit.

Turning now to the books that will be required, the first is the cash book, which has already been described. It is a matter of choice whether two cash books are employed, one for clients' moneys and the other for the solicitor's own moneys, or simply one cash book ruled with two cash columns. The latter is advocated, if only for the sake of reducing the number of books in use. Whichever system is adopted, it must be consistently borne in mind that the clients' cash book, or the clients' columns in the general cash book, must be used *only* for recording clients' moneys received and paid.

Then there will be required a ledger. Again, the solicitor must choose between having two separate ledgers, one for the clients' moneys and one for his own, or simply one general ledger ruled with two columns. The latter is strongly recommended, for it will enable the solicitor to see at a glance the financial position of a client without the necessity of turning up accounts in two books. The objection that there is likely to be confusion between the two columns is without foundation. The same confusion would occur if two separate ledgers were used, if care is not exercised when posting the items from the cash book and other books of prime entry. It will be evident that two cash books and one ledger may be employed, or one cash book and two ledgers, but it will be found that one general cash book and one general ledger, each ruled with double columns, will be the most practical, and this is the system that is advocated.

The accounts contained in the general ledger should be those relating only to clients, and it will be necessary to employ also another ledger called the private ledger, which will contain the personal accounts of the solicitor, such as the capital account, drawing account, bills account, and the office expenses account, to which will be posted such expenses as salaries, stationery, etc. The reason for using a separate private ledger will be obvious.

It will be appreciated that the best form of general ledger is one on the loose-leaf principle, for this will do away with the necessity for an index, the account for each client being inserted in alphabetical order. Moribund accounts may be removed and inserted in a separate binder so that the ledger in current use may not become unwieldy. Do not fall into the common error of introducing a " sundry clients " account. Such an account is very apt to get out of hand, and will cause untold delay and annoyance at balancing time. A fresh ledger sheet should be used for each client.

The private ledger should be bound in the ordinary way, although it may be deemed advisable to have it fitted with a lock and key.

In addition to the above, there will be required the following books, namely, a petty cash book, which should be ruled with one cash column on the debit side and a number of cash columns on the credit side ; a bills delivered book, which will have the same ruling as a journal, an allowances journal and a transfer journal, and a memorandum cash book to record the items which are to be periodically withdrawn from the clients' banking account.

In our next article we will describe how these books should be used in practice so as to reduce the amount of clerical work to a minimum and yet keep the records constantly up to date.

Company Law and Practice.

Founders' Shares.

Broadly speaking, the object of founders' shares may be said to be the provision of remuneration for the founders or promoters of a company ; and in return therefor these founders agree to secure the payment of the preliminary expenses in connection with the birth of the company, and to guarantee to place such shares (or a portion of them) as the company decides to offer for subscription to the public. They have long been recognised for their usefulness, and often attain considerable value in a successful company. The great number and variety of rights attachable to founders' shares are beyond the scope of this discussion by reason of their detail, but I shall attempt to deal with certain general aspects of the matter.

In passing it is important to remember that by s. 35 (1) of, and cl. (2) of Pt. I of the Fourth Schedule to, the 1929 Act, every prospectus must state the number of founders' or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.

It is essential to define accurately the terms of issue of founders' shares, for it sometimes happens that a fruitful bone of contention subsequently appears which takes the form of a dispute between the holders of founders' shares and the other shareholders concerning the preponderating rights attached to one body of shares by comparison with those given to the other. An example of this is alleged favouritism by the directors of one body, e.g., in the ascertainment of profits. The solution to such complaints that too large or too small dividends are paid to the one body may be found in conferring upon the holders of founders' shares a definite proportion of the profits to be distributed by way of dividend, and not to give them the right to receive the surplus profits after dividends have been paid on the other shares.

For these reasons, among others, it is a good precaution to have the founders' shares subscribed for in the memorandum, and to have their rights and obligations also specified therein ; this step will procure for such rights and obligations the benefit of the case of *Ashbury* v. *Watson*, 30 Ch.D. 376, which case is authority for the proposition that if the memorandum states the capital and divides into several classes the shares therein, and declares the dividend and other rights attached to each of these classes of shares, then such a declaration becomes a condition of the memorandum, and cannot be altered by special resolution or otherwise.

The promoters of a company in many cases become directors of the company when it is on its feet ; and if there are provisions for the creation of founders' shares which are to be allotted to the responsible subscribers, the directors, should there be a general power to allot, may allot them to themselves. There is of course no compulsion in the matter (since the directors can exercise their discretion) any more than in defining in the memorandum the rights and obligations of the founders' shares, which I have already mentioned. But if the directors consider such allotment to themselves of the founders' shares,

at par, then they must remember that they are bound to use their discretion in the matter. If the value of the shares is above par, then the directors receive from themselves the gift of a premium; such a course is not to be recommended in view of the directors' position as trustees of their powers for the company, but on the other hand it cannot, in the absence of *mala fides*, be condemned immediately: see *In re The London and Colonial Finance Corporation Limited*, 13 T.L.R. 576, per Lindley, L.J., at p. 578. From the company's point of view, it never expected to receive anything greater than par for its shares, and so it has no cause to grumble; but the shareholders may have different opinions on the matter. In the event of the court holding such an allotment to be improper, the measure of damages for which the directors are liable would appear, from *Shaw* v. *Holland* [1900] 2 Ch. 305, to be the excess (if any) of the market value of the shares at the dates of their respective allotments to the directors above the sums in fact paid by them for the shares.

Conditions which indirectly amount to an underwriting of the ordinary shares are sometimes imposed upon the founders' shares. An example is the case of *General Phosphate Corporation Limited* v. *Horrocks*, 8 T.L.R. 350. There, by a clause in the memorandum, "every original holder of a founders' share shall . . . apply for and take at least fifty of the ordinary shares"; and it was held that the Company were justified in placing the defendant, who only applied for founders' shares, on the register as an ordinary shareholder, and that for each founders' share applied for and allotted to him he must take up fifty ordinary shares.

Another point of great difficulty may arise in this way: until a dividend is declared no debt owed by the company in respect thereof can come into existence, although the amount necessary to pay it has been set aside: see *Bond* v. *Barrow Hæmatite Steel Company* [1902] 1 Ch. 353, and the observations of Farwell, J., at p. 362. Furthermore, the directors have a discretion in making such declaration. But when the memorandum provides that the share of profits appropriated to the founders' shares "shall" (not "may") be divided amongst them, has a holder of founders' shares the right to sue in respect of such appropriation as on a declared dividend? A company cannot alter the conditions contained in its memorandum (which creates a contractual liability) nor can it do anything which contravenes those conditions: *Ashbury Railway Carriage & Iron Company Limited* v. *Riche*, L.R. 7 H.L. 653. It seems arguable that the court would support the plaintiff in such circumstances; however, the point appears to have been undecided, and we must hope that a future decision will lighten our darkness.

By comparison with the other share capital of a company, founders' shares are, as a rule, of small nominal value and few in number. Therefore, their rights in a winding up must be carefully considered since *primâ facie* they would be entitled to share in the surplus assets in proportion to the shares held and not in proportion to the amounts paid on their shares: *Buck* v. *Cropper*, 14 A.C. 525. To secure their position in a winding up it is better to attach to the founders' shares the right to a definite proportion of the surplus assets. Internal faction and unworthy sentiments on the part of the ordinary shareholders may sometimes result in attempts to interfere with the rights of the founders' shareholders, but the court has power to restrain an interference by a majority with the rights of a class of shareholders if this majority intends to benefit itself at the expense of the oppressed class: see *Menier* v. *Hooper's Telegraph Works*, L.R. 9 Ch., App. 350.

With regard to the order in which founders' shares should be made to rank for payment, in a winding up, as regards capital, this should be *pari passu* with the ordinary shares. If they rank after the other shares, in the event of a loss equalling or more than the amount of the founders' shares being suffered by the company, then, consequent upon the case of *In re Floating Dock Company of St. Thomas Limited* [1895] 1 Ch. 691, it is possible to reduce the capital by cancelling only the founders' shares.

In conclusion, should it be desired to convert the founders' shares into (say) ordinary shares, *Trevor* v. *Whitworth*, 12 A.C. 409, should be borne in mind: that case decided that a purchase by a company of its own shares was *ultra vires*, unless the court sanctioned it as a reduction of capital. Lord Watson said, at p. 428: "If the shares are purchased [by the company] with the view of being re-sold, that is simply a speculation with the funds of the company. If they are purchased with the view of their being retained by the company, that is a permanent withdrawal of the money invested in them from the trading capital of the company"; and is a reduction of capital. Therefore, it is unwise to issue to the founders' shareholders ordinary shares, credited as fully paid up, the nominal value of which is equivalent to the market value (if at a premium) of the founders' shares, in consideration of the surrender and cancellation of the latter. It is better to allot to the founders' shareholders the equivalent of such holding in ordinary shares, which have been subscribed for by them at par, and in consideration of the opportunity to subscribe the founders' shareholders agree to the cancellation of their shares. The sanction of the court is necessary, but it would appear that, as there has been no diminution of liability nor payment off of paid-up capital, creditors need not consent. But such an operation always requires, because of its complexity, the most thorough investigation.

A Conveyancer's Diary.

Breaking Settlements.

I WROTE on this subject some time ago (76 SOL. J. 76, 80), and now I find that there is a decision which has altered the practice of the Inland Revenue regarding the incidence of estate duty in certain cases.

I may remind the reader that there are three ways in which a settlement may be brought to an end, or "broken" as it is commonly said.

Take the simple case of a settlement upon A for life with remainder to B.

The settlement may be broken in the first place by A surrendering his life interest to B. In that event estate duty will be payable on the death of A if he dies within three years by reason of s. 11 of the Finance Act, 1910, which enacted that in the case of a person dying after the 31st March, 1900, property, whether real or personal in which the deceased person or any other person had an estate or interest limited to cease on the death of the deceased, shall for the purpose of the Finance Act, 1894, and amending Acts, be deemed to pass on the death of the deceased, notwithstanding that that estate or interest has been surrendered or otherwise disposed of, whether for value or not, to or for the benefit of any person entitled to an estate or interest in remainder or reversion unless such surrender was *bonâ fide* made twelve months (now three years) before the death of the deceased and *bonâ fide* possession and enjoyment was assumed immediately and retained to the entire exclusion of the person who had the life estate.

It follows therefore that if A surrender to B, estate duty will be payable on A's death within three years, whether the surrender were for value or not.

The second method of breaking a settlement is by a transfer of the interest in remainder from B to A.

In that case no estate duty is payable on the death of A, but to some extent this is qualified by s. 57 of the Finance Act, 1910. Notwithstanding that enactment, it seems that there would be no duty payable where there had been a *bonâ fide* sale by B of his reversion to A, although the latter might have paid the purchase price out of the settled property.

But if B were given a charge on the property s. 57 would appear to apply.

I dealt at some length in my former articles with the question whether in such cases the trustees of the settlement were liable for the future duty, and I said there that they were not, although, without the protection of the court, it would be unwise of them to part with the trust funds without making provision for any duty which might become payable on the death of the person having the life interest.

I now turn to the third method, which is affected by the recent decision to which I will refer.

That method is by having an actuarial valuation made of the value of the life interest, and the interest in remainder respectively, and dividing the trust property between the life tenant and remainderman in the proportions shown by such valuation to represent their interests.

In that case I said before that no estate duty would be payable on the death of the life tenant. It was for a long time, in fact, the practice of the Inland Revenue not to claim duty in such cases, but it seems that the practice has now been changed. The contention now prevailing amounts, in effect, to this. Suppose a fund of £1,000 settled on A for life, with remainder to B. If on a valuation it is found that A's interest is worth £100 and B's interest £900, and the fund is so divided, then what has really happened is that A has surrendered his life interest in £900 to B, and consequently estate duty on that sum will be payable by B upon A's death within three years.

That seems to have support from the case of *Attorney-General* v. *Llewelyn*, 78 L.J. (N.C.) 10. I cannot find any other report of the decision, which is surprising considering its importance.

The facts were that the Llewelyn Estates stood limited to the use of Sir John Llewelyn for life, with remainder to the defendant. In December, 1925, there was executed a deed of exchange whereby the defendant conveyed to the life tenant certain of the lands, to the intent that the life estate should merge, and the life tenant conveyed certain other lands to the defendant to the like intent. The life tenant died in 1927.

The Crown claimed duty upon the property which had been conveyed by the life tenant to the remainderman.

The defendant contended that the transaction was for valuable consideration and protected by s. 3 of the Finance Act, 1894, which enacts that estate duty shall not be payable in respect of property passing on the death of the deceased by reason only of a *bonâ fide* purchase from the person under whose disposition the property passes. The Crown, of course, relied upon s. 11 of the Finance Act, 1910. Finlay, J., in his judgment, pointed out that the effect of the deed of exchange was that, whereas formerly the deceased had the life interest and the defendant the reversionary interest in the whole property, thereafter each owner had the fee simple of part of the settled estates. The defendant therefore said that the property conveyed to him was conveyed for valuable consideration and was protected by s. 3 of the Act of 1894. The fallacy behind that argument, his lordship said, was that the property conveyed to the defendant was the life interest, and that life interest did not pass on the death, but on the contrary was put an end to by the death. The argument was, in his lordship's opinion, based on a confusion of the property for which value was given with the property deemed to pass on the death on which duty was levied. The learned judge added that if s. 3 of the Act of 1894 was to apply, those two items of property must be the same, and in that case they were utterly different.

The defence, therefore, failed, and there was judgment for the Crown.

I hope that this case may find its way into the Law Reports. It is certainly important, having regard to the former practice of the Inland Revenue. There must have been many instances in the past (in fact, I know of some) where there has been a division of the trust funds based upon a valuation of the respective interests of the life tenant and the remainderman, and it has been assumed that no estate duty would be payable upon the death of the life tenant, and, in fact, until recently, no such duty has been claimed.

It does not appear that the decision affects a case where there is a *bonâ fide* purchase for value by the tenant for life of the interest in remainder. It seems to apply only where there has been a division of the trust estate between the parties on the terms of the tenant for life taking some part absolutely, and those entitled in remainder taking the residue absolutely. It would, however, be more satisfactory if there were a full report of the case in the Law Reports.

Landlord and Tenant Notebook.

Measure of Mesne Profits.

THE Common Law Procedure Act, 1852, s. 214, replacing s. 2 of 1 Geo. IV, c. 87, enables landlords to join a claim for mesne profits with a claim for ejectment. Most text-books make a good deal of this enactment and of subsequent developments consequent on the introduction of summary procedure by rules of court; but when it comes to considering what mesne profits connotes, instruction is somewhat deficient, and I find, to my surprise, that a judicial dictionary of recognised worth is silent on this point.

The statute, being concerned with procedure, does not define the term. But certain words in the section deserve, I think, emphasising, for they bring home to us a point which we may easily overlook when drafting a summons or claim for possession and mesne profits. The claimant, says the section, is to be "permitted to go into evidence of the mesne profits thereof which shall *or might* have accrued from the day of the expiration or determination of the tenant's interest in the same down to the time of verdict given in the case" and the jury is "to give verdict . . . as to the amount of damages to be paid for such mesne profits."

As a matter of interest, I learned recently that the law of British India does contain a definition; by the Civil Procedure Code, 1908, s. 2 (12), mesne profits means profits actually received and profits which might by ordinary diligence have been received.

There are at least three ways in which a landlord could conceivably be recompensed for wrongful holding over. Damages could be assessed on the basis of what the landlord has lost, on the basis of what the tenant has made, or on the basis of what the tenant should have made. What the landlord has lost and what the tenant should have made are not necessarily the same, even if personal qualifications be equal. For by being deprived of vacant possession at the particular time, the landlord may have lost the chance of an advantageous sale. But this, as was pointed out in *Dunn* v. *Large* (1783), 3 Doug. 335, is not a matter that can be considered in assessing mesne profits. What should be done in these cases is to sue in contract, i.e., for breach of express or implied covenant to deliver up.

Nor can a claim for mesne profits have the same scope as a claim for trespass. In an action for trespass the plaintiff may sometimes recover more than the value of the occupation of the land. In another old case, *Goodtitle* v. *Tombs* (1770), 3 Wils. 118, in which the claim was for being kept out till execution, the court said: "The plaintiff is not confined to the very mesne profits only, but he may recover for his trouble. I have known four times the value of the mesne profits given by a jury in this sort of action of trespass; if it were not to be so sometimes, compleat justice could not be done to the party injured."

Thus mesne profits must be taken to be essentially limited to the cash value of the use and enjoyment of the premises. Indeed, the landlord may have to give credit for outgoings: in *Doe* v. *Hare* (1833), 2 Cr. & M. 145, the tenant was allowed

to deduct a payment of ground rent which he had been obliged to make, his goods being liable to distress in default.

In modern times this branch of the law has been enriched by a couple of authorities showing the period over which mesne profits can be claimed. It is, of course, the usual practice to ask for mesne profits till the date of the judgment when joining the claim to a claim for possession. And in many cases there is little hope of recovering any money at all from the defendant, so that the question verges on the academic. But it has been demonstrated that under modern procedure a landlord may claim, even by a specially endorsed writ, possession and mesne profits till the date of obtaining possession, and an order giving liberty to sign judgment for possession and mesne profits to be calculated up to the time of obtaining possession was upheld in *Southport Tramways Co.* v. *Gandy* [1897] 2 Q.B. 66, C.A.; this though the plaintiff's affidavit, in which an amount was named, showed that he had misconceived the law, considering himself entitled to double value. Lopes, L.J. remarked that he might have claimed £10,000 without affecting the goodness of the writ!

Elliott v. *Boynton* [1924] 1 Ch. 236, C.A., the most recent authority, deals with the commencement of the period in forfeiture cases. It is really an illustration of a principle of the law of forfeiture rather than a mesne profits case, for it lays down that mesne profits cannot be claimed as from the date when the cause of forfeiture came into being, but only as from the date of the evidencing of the landlord's intention to exercise his option, which conclusively determines the lease. The necessary "unequivocal act" in that case, as in many others, was the issue of a writ claiming possession, and this probably accounts for what I consider a misleading narrowness in the headnote, "the mesne profits are assessable from the date of the writ and not from, etc." Such a writ is, undoubtedly, the best evidence of a landlord's election. In this case it was issued "after a short correspondence between the parties." But cases are conceivable when a lessor manifests his intention to forfeit some time before issuing process, and in such circumstances mesne profits can be measured by reference to the earlier date.

Obituary.

Mr. H. R. BAZELEY.

Mr. Henry Russell Bazeley, B.A., solicitor, senior partner in the firm of Messrs. Bazeley, Barnes & Bazeley, of Bideford, died at Amesbury on Thursday, 20th September. Mr. Bazeley, who was educated at Blundell's School and Cambridge, was admitted a solicitor in 1899. He was a former member of Bideford Town Council, and was elected Mayor of the borough in 1908. Before the amalgamation of the county court districts he was Registrar for Bideford, and up to the time of his death he acted as Deputy-Registrar.

Mr. C. K. HULBERT.

Mr. Charles Kenelm Hulbert, solicitor, a partner in the firm of Messrs. Pye-Smith, Hulbert & Kildahl, of Salisbury, died at Fordingbridge on Tuesday, 18th September, at the age of fifty-seven. Mr. Hulbert was educated at Felsted and was admitted a solicitor in 1902. He was for some years Clerk to the old Salisbury and Fordingbridge Drainage Board.

Mr. A. E. M. TAYLOR.

Mr. Alfred Egerton Maynard Taylor, B.A. Oxon, solicitor, a partner in the firm of Messrs. Eland, Nettleship & Butt, of Lincoln's Inn-fields, W.C., died at Middlesex Hospital following an operation on Friday, 28th September. Mr. Taylor, who was admitted a solicitor in 1900, was fifty-nine years of age.

Our County Court Letter.

VALIDITY OF SALE OF MOTOR CAR.

In a recent case at Weston-super-Mare County Court (*Metcalfe* v. *Jack Pruen Limited*) the claim was for £65 as the price of a Chrysler car sold and delivered. The plaintiff's case was that (*a*), being a motor car dealer, he had supplied the car to the defendants for re-sale to one of their customers, and had been promised a cheque for the above amount; (*b*) he was ultimately told, however, that the sale had been rescinded (as the defendants' customer was found to be a man of straw) and they required the plaintiff to take the car back; (*c*) the alleged reason was that (in accordance with a custom of the trade) it had only been taken on sale or return, in case the prospective sale was unsuccessful; (*d*) an effective sale, however, had in fact taken place, as the plaintiff had been instructed by the defendants to inform the registration authorities, and the prospective purchaser had been given the rugs, badges and mascot—bearing the defendants' label; (*e*) no special custom (authorising the return of the car to the original supplier) had been pleaded, and the defendants' repair book (disclosed on discovery) showed that repairs had been debited to the prospective customer. The defendants called expert evidence of a custom in the trade of borrowing cars on a sale or return basis, and they contended that there had not been an effective sale to their customer, as his references were unsatisfactory. His Honour Judge Parsons, K.C., held that, by reason of the arrangements with their customer, the defendants had made an effective sale, whereby they had lost the power of returning the property to the original seller. Luckily they had regained possession of the car, but the plaintiff was nevertheless entitled to judgment for £65, with county court costs, although the original proceedings were in the High Court.

THE REMUNERATION OF WEAVERS.

In a recent case at Burnley County Court (*Catlow* v. *George Street Manufacturing Co.*), the claim was for certain back pay, the plaintiff's case being that, for weaving cloths with 13's weft, and circular cloths, he had been paid on the more-looms list, instead of on the uniform list. The defendants contended that a contract had been constituted by the plaintiff's acceptance of a tally card, giving particulars of the prices to be paid. In a reserved judgment, His Honour Judge Burgis observed that the defendants were not members of an employers association, but their freedom of contract was limited by the Factory and Workshop Act, 1901, s. 116, e.g., they had to exhibit a placard (regulating the basis and conditions of wages) and they had to furnish each weaver with written particulars of the rate of wages, i.e., the tally card. There was a conflict of evidence as to whether there were two placards (one stating the uniform and the other the more-looms list) or whether there was only one (stating the more-looms list) as alleged by the defence. The plaintiff's evidence was accepted on this point, and it was held that there never was a contract to weave for the price set out in the tally card, which had to be read in conjunction with the two lists. The contract was to pay wages in accordance with the uniform list (except where it was modified by the more-looms agreement) and the defendants had never informed the plaintiff how they calculated the weaving price, nor had he agreed to it. The plaintiff was right in his contention that circular cloth was not within the more-looms list, as it had more than 200 threads to the square inch. Judgment was, therefore, given for the plaintiff, with costs, leave to appeal being granted.

His honour expressed the opinion that a clause in the more-looms agreement, viz., "Special consideration to be given later to counts coarser than 14's," was an expression of hope that the employers and operatives associations would meet in the future and extend the system to counts coarser than 14's.

To-day and Yesterday.

LEGAL CALENDAR.

1 OCTOBER.—On the 1st October, 1714, Sir Alan Brodrick, Speaker of the Irish Parliament, was appointed Lord Chancellor of Ireland by George I.

2 OCTOBER.—France was in the midst of the upheaval following the flight of Charles X and the accession of the bourgeois King Louis Philippe when the President of the Society of the Friends of the People and several of its organisers were put on trial in Paris on the 2nd October, 1830. "For long enough you have not allowed a week to pass without sending to prison some friend of liberty," cried the chief accused. "Judges of Charles X we reject you! The people have stripped you of your robes in giving liberty to your victims. . . . Dare you now affront from your seats from which the *fleurs de lis* have been torn those who have chased away the idol before whom so many victims were sacrificed?" The accused were convicted.

3 OCTOBER.—On the 3rd October, 1258, Roger de Thurkilbi was the first named of the three who were assigned "*ad tenendum Bancum Regis*" at Westminster until the King more fully regulated that bench. He was certainly among the greatest judges of his time and in "*Flores Historiarum*" was described as second to none in the law. His decisions are among the few expressly mentioned in Hengham's "*Summa Magna*." He was frequently assigned to take particular assizes and deliver gaols.

4 OCTOBER.—In 1837 there were disturbances in Upper Canada and an American-owned ship, the "Caroline," was actively engaged in conveying arms to the rebels. One night it was boarded by a party of loyalists and destroyed, an American citizen being killed in the affray. In 1841 a British citizen domiciled in Canada was suddenly arrested in New York and charged with being concerned in the alleged murder. Feelings were embittered between England and the United States, and the trial of Alexander M'Leod at Utica on the 4th October was highly sensational. It lasted six days and ended in the prisoner's acquittal.

5 OCTOBER.—Lloyd Kenyon, the son of a landed proprietor and farmer of good education but limited means, was born at Gredington in Flintshire on the 5th October, 1732. He was educated at Ruthin Grammar School, where Lord Keeper Williams and Chief Baron Richards had formerly been pupils. Dr. Hughes, his headmaster, cannot have guessed that the boy would one day be Master of the Rolls and would appoint him preacher of the Rolls Chapel. Young Kenyon was articled to an attorney and showed so much diligence that he was nearly taken into partnership. But a difference arose (happy difference!) and he went to the Bar, becoming Master of the Rolls and Chief Justice.

6 OCTOBER.—On the 6th October, 1534, John Taylor resigned the office of Master of the Rolls, making way for Thomas Cromwell. He died before the end of the year. He had been appointed in 1527, and subsequently was engaged in diplomatic missions. He was sent to France to invest Francis I with the Order of the Garter, and after sitting as one of the commissioners to try the validity of Henry VIII's marriage with Catherine of Arragon he was in 1531 named ambassador to France.

7 OCTOBER.—On the 7th October, 1831, Lord Chancellor Brougham made a speech on the second reading of the Reform Bill in the House of Lords which was considered to be a masterpiece of sarcasm against the Tory peers. The peroration created a tremendous sensation. Falling on his knees he adjured the House not to reject the Bill and remained dramatically kneeling. But his friends, realising that he had previously fortified himself with mulled port, hurried forward, ostensibly to congratulate him, but actually to pick him up and replace him on the Woolsack.

THE WEEK'S PERSONALITY.

In the same year that he was appointed Lord Chancellor of Ireland, Sir Alan Brodrick entered the British Parliament as member for Midhurst, which he continued to represent till his death. In 1715 he became Baron Brodrick of Midleton, and in 1717 advanced another step as Viscount Midleton. As a judge he was highly thought of, and one enthusiastic admirer declared that "his court was an enlightened school in which a mild and benevolent magistrate by practice and example animated the Bar to legal skill." A more temperate critic observed that "the Lord Chancellor had talents but so high an opinion of them that he always thought himself neglected and ill-used." Certainly he was proud and imperious, characteristics which brought about a breach with the Viceroy, the Duke of Grafton, who eventually connived at the passing of a vote of censure by the Lords on the learned judge. This caused him to resign his office after holding it ably for eleven years. His opinionativeness was probably his most serious defect, but this was more than balanced by his bold independence and honesty—well exemplified in his opposition to Wood's coinage patent, when his conduct largely contributed to preventing an adventurer from "cramming his half-pence down the throats of the Irish."

RECREATIONS OF THE BENCH.

Now the time has come to reassemble the scattered parts of the legal machine and to set the wheels of business going in the Royal Courts of Justice. The *membra disjecta*, limbs of the law, torn for a while from the majestic body of our jurisprudence, have been joined together again like the policeman at the end of a harlequinade. Beneath what recreational bushels the luminaries of the Bench have for a time hidden their lights may sometimes be revealed by the vacation injunction. Hawkins, J., was once cornered by a solicitor on Brighton Pier. Pickford, J., was found on horseback at Epsom, and Vice-Chancellor Shadwell bathing in the Thames. Bucknill, J., was once called upon for an injunction while he was out shooting and when asked subsequently in court whether he remembered the matter, he replied: "Yes, I do, because I nearly killed a pheasant, a barrister and a solicitor with one shot." Eve, J., of course, is the farmer judge, the Cincinnatus of the Bench, and to him almost applies Lord Bowen's description of another jurist addicted to rural pursuits as "milking a cow with one hand and annotating 'Lindley on Partnership' with the other."

GOLFING JUDGES.

Golf leads the way as relaxation for the legal mind, and Lord Atkin during the Long Vacation added another to the lawyers' stock of golfing stories by one which he told at a caddies' reunion dinner, in connection with the Aberdovey Golf Club. "I am only a moderate golfer," he said, "but I enjoy the game and believe I have done at Aberdovey what no other golfer in the world has ever done. That was killing a stoat with a brassie shot." The late Lord Justice Scrutton was a great golfer, and so regular in attendance on the Woking course that once, in an Admiralty case, counsel explained that the distance apart of two steamers was about the length of the third hole at Woking. It is said that long ago Mr. Scrutton (as he then was), while practising on the Ashdown Forest course, boxed the ears of ten-year-old Abe Mitchell, who, playing nearby, had been attracted by the novelty of the solid rubber ball he was using, and had picked it up. Three years later, young Mitchell was his caddie. Among the notable judicial golfers may be particularly mentioned Greer, L.J., and Hawke and Langton, JJ.

Mr. Edward James Watson, D.Litt., solicitor, of Bristol, left £28,767, with net personalty £25,325. He left: £100 to the Infirm Priests' Society, Clifton Diocese, and £50 to Crewkerne Hospital.

THE LAW SOCIETY AT NEWCASTLE-ON-TYNE.

ANNUAL PROVINCIAL MEETING.

[By our Special Representative.]

(*Continued from page* 687.)

Mr. Philip Frere (London) read the following paper :—

Appeals in English Law.

The subject of this paper is that of "Appeals in English Law."

1. I think it may be said with some truth that a study of this particular field of law reveals a state of affairs which in many respects is both illogical and unsatisfactory: one obvious defect is the existence of a number of tribunals exercising appellate jurisdiction with widely different rules as to the extent and manner of appeal; another is that we have a procedure which is unnecessarily diversified and under which the limitations on the right of appeal are entirely haphazard. The anomalies of the English system of appeals (which is, of course, no system at all) are due to piecemeal legislation and to the reluctance of the English legal profession to carry out even the most urgent reforms, and the purpose of this paper is to discuss these defects to demonstrate some of these anomalies, and to suggest where possible, means of improvement.

2. I will not weary you by setting out all the different kinds of appeal with their own particular procedure and jurisdiction. The point I wish to make first of all is that in our rules as to appeals there is neither logic nor system of any sort. Let me take, as one instance, the difficulties of an appeal from a Judge in Chambers in the King's Bench Division. It is laid down by statute (*) that those matters which are "practice and procedure" shall go on appeal to the Court of Appeal, while those matters which are *not* "practice and procedure" shall be heard on appeal by a Divisional Court. The White Book which, as you all know, is a volume weighing some 1¼ lb., consisting of about 3,000 pages and some 12,000 reported cases, devotes no less than two pages to the fascinating topic of what is or is not a matter of practice and procedure. For instance, in *Watson* v. *Potts*† an appeal against an Order of a Judge refusing an order of prohibition to a County Court was dismissed by the Court of Appeal on the grounds that the appeal should have been to the Divisional Court—i.e., that it was *not* "practice and procedure"; this is only one instance among many that could be given of the learning on this small and highly technical part of the law.

3. Let me take another instance of the complexity of appeals in the same department of the law. There is a department calling itself the Crown Office where mysterious things such as a Writ of "quo warranto"—"ad melius inquirendum" and "ad quod damnum," also outlawry, articles of the peace, and indictments in the King's Bench Division are dealt with. To the ordinary practising Solicitor the latinity itself of the remedies which he is seeking to enforce are sufficient to perplex and discourage him. If, however, he wishes to appeal on the Crown side, then, indeed, he is immediately plunged in a labyrinth of which sometimes even the experienced Crown Office Officials themselves do not hold the thread. First, it has to be decided whether the appeal is in a criminal cause or matter—because if it is, then no appeal to the Court of Appeal would lie. This may well prove an insoluble problem if, for instance, it is an application for penalties in a revenue case, since the authorities are conflicting as to whether that is or is not a criminal cause or matter. The White Book in this case devotes some four pages and cites some fifty or sixty cases on this one point. Secondly, if you can surmount this difficulty and decide that your case is *not* a criminal cause or matter, then the next question to be decided is whether *leave* to appeal is required. If the appeal is of the particular kind arising under Baines' Act (‡) no leave is required; if it is on a case stated by Justices then leave *is* required. But that is not the end of the difficulties, because if the case is under the Dentists Act,(§) the Midwives Act,(‖) or the Therapeutic Substances Act,(¶) no appeal is allowed at all.

And these are only some of the complications which exist on the Crown side of the King's Bench Division as regards appeals.

(*) Supreme Court of Judicature (Consolidation) Act, 1925, s. 31 (3).
(†) [1899] 1 Q.B. 54.
(‡) 12-13 Vict., c. 35.
(§) 11-12 Geo. 5, c. 21.
(‖) 2 Ed. 7, c. 17.
(¶) 15-16 Geo. 5, c. 60.

4. I think I have shown you enough of the kind of practical difficulty that exists in our methods of appeal, and I would like now to say something about the general theory of appeals. On the civil side the general theory is that the successful party should obtain his costs from the other side. This clearly works no injustice when it is the Respondent that is successful: the Appellant has appealed unsuccessfully and it is right that he should pay for his want of success. It is a different matter when it comes to ordering the unsuccessful Respondent to pay the costs of the successful Appellant. The decision which is reversed has been given by a Judge; if the Court of Appeal find that the Judge has made a mistake, it does seem a trifle unjust that the Respondent should pay for this mistake. It has been suggested that the costs of successful Appellants should be paid out of a fund collected from the Court fees—indeed, Mr. C. P. Harvey, in his witty little book on law reform, "Solon or the Price of Justice," put forward this suggestion. The fund would probably need some assistance at the start, but it has been estimated that not more than £20,000 should be sufficient to establish a fund for the paying of these costs, which fund would afterwards be replenished by a grant from the Court fees. The suggestion has much to be said for it: it is clear that the existence of this fund would not lead to any real increase in appeals since the Appellant would still have the deterrent, and the very wholesome deterrent, of having to pay his opponent's costs if unsuccessful. On the other hand, it does provide a means whereby the Respondent would be relieved of the burden of paying for the mistakes of the judiciary.

You will probably remember the story of the Recorder who was charging a criminal jury in a case where the prisoner had raised the defence that he made a mistake of law. The Recorder said: "Mistake of law is in English law no defence to a criminal charge. As soon as a Chinaman who speaks and reads no English lands on the white cliffs of Dover he is deemed to know the whole of English law which is contained in some 200 volumes of statutes, numerous volumes of statutory Rules and Orders, and in some three-quarters of a million decided cases. In short, everybody is presumed to know the law except His Majesty's Judges, who have a Court of Appeal set over them to put them right." Thus, the Recorder. The suggestion I put forward is that this putting right should not be done at the expense of the particular litigant who thus suffers personally from the mistake of the Judge.

5. Then there is another very desirable reform, one indeed, which is a matter of urgent importance, and that is that the whole subject of appeals should be simplified. Even after the recent changes in the law to which I shall draw your attention later, there are still far too many appeals possible. As just one example, let us take the case of a bastardy order made by a magistrate where a point of law is involved. An appeal can first of all be made to Quarter Sessions which is in the nature of a re-hearing: that is one. Then a case can be stated for the Divisional Court: that makes two; from there appeal lies, as it is not a criminal cause or matter, to the Court of Appeal, which makes three; and from there to the House of Lords—four. Now four Appeal Courts is quite clearly too many, and I suggest it is high time that the rule be laid down that in no circumstances should there be more than one appeal court besides the House of Lords; indeed, I personally would by no means object to see one Appeal Court only.

6. In addition I suggest that the appeal procedure might well be unified in the sense that there should be as great a similarity of practice as possible in the various steps which have to be taken, such as the time for setting down appeals, the mode of entering appeals, the manner of presenting them, and such like. The present practice is simply chaotic, and I cannot better illustrate it than by referring again to the practice in the Crown Office upon which I have already drawn for an illustration. What follows may well be both a novelty and a surprise to some of you. In the Crown Office the time for entering an appeal from a Judge in Chambers is five days; a case stated, six months; appeals from County Courts is, or rather was, twenty-one days (because this will probably be changed as a result of the Administration of Justice (Appeals) Act, 1934); appeal from special referees

is six weeks; on the other hand appeals from the Mayor's Court must be entered within two days and if this provision is not complied with all right of appeal is lost; here, by the way, there is another curious technicality to be reckoned with which arises under that venerable statute the Sunday Observance Act of 1677. The effect of this Act, shortly, is that if the second of the two days is a Sunday it does not count, thereby making this particular kind of appeal an exception to the general rule, which is, as you probably know, that Sunday does count if nothing is said about its exclusion.(*) In the Crown Office alone the different times for entering various matters are two days, three days, five days, six days, eight days, twenty-one days, six weeks, three months, six months, and reasonable time. Equally chaotic is the time for the return days, which ranges from two clear days through seven, eight and fourteen days to twenty-one days, with the added complication that sometimes the period is calculated in "clear" days and sometimes not. I may say, too, that the computation of time is further complicated by the difference between the time fixed *within* which an act has to be done, and the time fixed *before* a certain day.

7. You will all probably remember the recent case of the Duke of Atholl whose appeal was dismissed on a technicality which I really think would have been discreditable to the jurisprudence of a primitive African tribe. In this case, s. 2 of the Summary Jurisdiction Act, 1857, provides that an Appellant by case stated shall transmit the case to the Court, first giving notice in writing of such appeal—I quote the words of the Act—"With a copy of the case so stated and signed, to the other party to the proceeding in which the determination was given." On the 16th February the solicitor for the Appellant filed the case stated in the High Court and at the same time notified the solicitor for the prosecution that he had done so. It was held that as the Act said he must first give notice, the Court had no jurisdiction since he had filed the case first and given notice afterwards—I suppose it is difficult to imagine a more ridiculous though correct decision. With examples of this kind so ready to hand one is tempted to think that our leading barristers and solicitors when speaking on English law at the Guildhall or other public functions, instead of extolling its perfect qualities, would, perhaps, be better employed in pointing out the many glaring defects of the English legal system, which, far from being as we complacently assume, the admiration of the whole world, is only too often the cause of horror on the part of other nations on account of its excessive cost and illogical technicalities.

8. I should like now to pass to some recent legislation dealing with this subject. The first is the Summary Jurisdiction (Appeals) Act, 1933. This Act has effected a very real improvement in the law as to appeals from Petty Sessions to Quarter Sessions. The main reforms introduced by this Act are as follow: It will henceforth be possible to appeal at much less cost because it will no longer be lawful for the bench to demand either a lump sum deposit or strong sureties before prosecuting an appeal. Henceforward the Appellant can only be required to enter into recognizances to prosecute the appeal. Again, the technicalities of entering the appeal at Quarter Sessions are done away with. Before the Act, it was necessary to ascertain the rules of the particular Quarter Sessions as to the entry of appeals and these rules differed in every Quarter Sessions. This having been done it was then necessary to serve a number of persons within a certain time and if these provisions were not strictly complied with all right of appeal was lost. Indeed there was a decision on the lines of the Duke of Atholl's case that if the notice of appeal was given before the recognizances were entered into, Quarter Sessions had no jurisdiction. However, all that is altered now. Henceforward the Clerk of the Peace, instead of the Appellant, is charged (by s. 3) with giving notice of the date of the appeal. Another technicality that has been removed is that an appeal can now be abandoned, whereas formerly this was impossible and the appeal had to be called on in order to be dismissed.

Legal aid for poor Appellants has not been forgotten, and the quality of the tribunal has been improved by forming an Appeal Committee of Quarter Sessions. This Committee is to consist of Justices having "special qualifications" for the hearing of appeals, and is to consist of not less than three and not more than twelve in number. This latter provision should certainly make for better tribunals since the old Quarter Sessions Appeal Court, consisting, as it might, of 40 or 50 justices, was very unsatisfactory.

From this short account of the main provisions you will see that this Act is a very welcome piece of legislative reform, and I feel sure that you will agree with me that Mr. R. H. Turton, who piloted the Bill through the House of Commons as a Private Member's Bill with the approval of the Government, deserves to be congratulated on an extremely good piece of work. The only regret is that the provisions as to legal aid do not apply to the civil side of the work at Petty Sessions such as bastardy orders, though the other rules do apply.

9. The other recent statute which deals with appeals is the Administration of Justice (Appeals) Act 1934. This Act, which was passed in July, 1934, effects two reforms as to appeals. It deals in the first place with the appeal to the House of Lords. Under the Act, no appeal shall lie to the House of Lords except with the leave of the Court of Appeal, or of the House of Lords, instead of there being as at present (in the majority of cases) an unrestricted right of appeal. If leave is only given in important cases this should remove the injustice of the unrestricted appeal to the House of Lords which hitherto has often forced a respondent into a ruinous expenditure. It should be remembered that a multiplicity of appeals (by which I mean the right to appeal more than once in the same cause) not only is oppressive to the actual litigants concerned but also prevents many from enforcing their just claims, because they are deterred by the possibility of being dragged through a succession of appeal courts. The other matter dealt with by this Act is that of County Court Appeals. In future an appeal from the County Court will lie direct to the Court of Appeal instead of to a Divisional Court as at present; thus the work of the Divisional Courts of the Probate, Divorce and Admiralty Division and of the Chancery Division will be very greatly curtailed.

10. I cannot help thinking it is a matter for regret that this is substantially the one and only reform effected as the result of the second report of the Business of Courts Committee under the chairmanship of Lord Hanworth, which was issued in 1933. That Committee recommended that the Divisional Court should be abolished entirely and its appellate jurisdiction transferred to the Court of Appeal; this would have had several very real advantages. For one thing it would have had the advantage of making the Court of Appeal the one great Court of Appeal of the country. For another it would have given the decisions of the Divisional Court where there is no appeal (e.g., cases stated in a criminal cause or matter) the same status as decisions of the Court of Appeal. Again, in matters where there is an appeal from the Divisional Court to the Court of Appeal (such as cases stated in non-criminal causes) it would have removed one appeal. The Act which has been passed is, I am afraid, but a half-hearted attempt to carry out the Committee's recommendations, and it is sincerely to be hoped that the Lord Chancellor will speedily give effect to the whole recommendation of the Committee in this respect; it is indeed a little difficult to understand why this recommendation of the Committee, which was representative of all branches of the legal profession, was not carried out in full.

11. The transfer of some of the work of the Divisional Court brings me to a subject which is closely connected with this transfer, namely, the strength of the Court of Appeal. The Hanworth Committee's second report recommended that the Court of Appeal should be enlarged to deal with the extra work entailed by the abolition of the Divisional Court and the Committee also recommended that the Court of Criminal Appeal should become part of the Court of Appeal. The object of this was to give the Court of Criminal Appeal the status of the Court of Appeal, and to prevent a conflict of jurisdiction between the two Courts. You probably remember the cases concerning the stop-list of the Motor Trades Association. There was the case of *R.* v. *Denyer* (*) where the Court of Criminal Appeal decided that a letter from the superintendent of the stop-list of that Association intimating that a motor trader would be put on the stop-list unless he paid £250 was uttering a letter demanding money with menaces and without reasonable or probable cause. The accused, in fact, was convicted of a grave offence. But in *Hardie Lane* v. *Chilston* (†) the same point was raised, but in a civil case, and the Court of Appeal decided that the letter from the Motor Trade Association was *not* illegal, and therefore the money paid was not paid under duress. You may also perhaps remember the sequel. *R.* v. *Denyer* was adversely commented on in the Court of Appeal, where the view was expressed that the decision was wrong, and a few days later the Lord Chief Justice made a public pronouncement. His Lordship said: "It may be well to make it clear for the purposes of the administration of the criminal law that unless and until the decision in *Rex* v. *Denyer* in this Court is reversed by the only competent Tribunal [the House of Lords] it is binding upon, and will be enforced by, this Court."

In this extremely unsatisfactory state the law remains to this day.

12. Doubtless, in order to avoid another incident of this nature, the Hanworth Committee recommended that the

(*) *Milch* v. *Frankau* [1909] 2 K.B. 100.

(*) [1926] 2 K.B. 258. (†) [1928] 2 K.B. 306.

Court of Criminal Appeal should be merged in the Court of Appeal, and in order that the increased amount of work thereby entailed should be adequately dealt with their proposals included the abolition of Lords Justices (in the sense that no more Lords Justices were to be appointed) and provided that the appeal work in future was to be done by an Appeal Court sitting in three divisions and manned by puisne Judges, who were thus to have both original and appellate functions.

This proposal of the Committee as regards the personnel of the Appeal Court has not met with any great favour by any of the professional bodies that have had to consider it, and it seems probable that the Committee did not sufficiently appreciate the high regard which the present Appeal Court has obtained among the profession. This is certainly in strong contrast to the attitude of the legal profession when the Court of Appeal was first constituted under the Judicature Acts passed in the seventies of the last century, for at that time it met with a good deal of adverse criticism, particularly from the Bar, who were used to the system of appeals to the Exchequer Chamber, i.e., from one puisne Judge to a number of other puisne Judges sitting as an Appellate Court.

But even in the sixty years that have elapsed, the fact that the Court of Appeal is an independent Court, the fact that it is composed of Judges who are, so to speak, elevated over the puisne Judges—these considerations especially have made it a strong and a respected Court, and any proposal to go back to the system ruling before the Judicature Act must, I think, be considered a retrograde step. The tendency, in fact, is towards the establishment of an even more authoritative Court of Appeal by making it the final Court of Appeal of all—that is, by the abolition of the House of Lords as a final tribunal, and by providing for sittings with five Appeal Judges when the importance of the case warrants it.

13. Whatever may be the ultimate fate of the Court of Appeal it is, I think, clear that the total abolition of the Divisional Court was not carried out by the Lord Chancellor. This recommendation of the Hanworth Committee had the whole-hearted support of that hitherto very reactionary body, the Bar Council, which in this case showed a very welcome desire for reform. This attitude of the Bar deserves emphasis, because in the past, they have been conspicuous for their opposition to Legal Reform. History shows that they opposed tooth and nail such reforms as the Criminal Evidence Act of 1898; the establishment of a Court of Appeal; the abolition of the death penalty for stealing 40s. in a shop, and, to go further back still, the abolition in 1731 of the use of Latin and French in the Courts, on which occasion, according to the quasi-official record of Parliament, "The Bill afterwards passed both Houses and obtained the Royal Assent notwithstanding the opposition of the whole body of the lawyers."

The strong support of the Bar Council to this recommendation of the Hanworth Committee is therefore all the more significant.

14. However, in spite of the fact that the Divisional Courts have only been partially abolished, there is no doubt that even so extra work will be thrown on the Court of Appeal. The problem is how this extra work is to be disposed of, and up to the present the Lord Chancellor has not dealt with it in the way that has been urged upon him from various quarters, namely, by the creation of a number of new Lords Justices. The advantage of this course would be that it would be an indirect way of relieving the congestion in the King's Bench Division without increasing the number of King's Bench Judges. By relieving that Division of the County Court Appeals it would enable the existing Judges to deal with the arrears which have accumulated to a very unsatisfactory degree. The method which is apparently proposed is that of obtaining for the Court of Appeal the help of the King's Bench Division Judges, and that, unfortunately, will do practically nothing towards reducing these arrears. It is to be hoped, therefore, that the creation of new Lords Justices will follow. The unanimity of the legal profession on this question is shown by the fact that there was a motion in the House of Commons not long ago in the name of seventy members nearly all connected in some capacity or other with the law, advocating the immediate appointment of three new Lords Justices. Nothing, however, has been done, and the delay has given rise to the comment that the proposal has its disadvantages, inasmuch as the office of Lord Justice, being in the patronage of the Prime Minister, and not of the Lord Chancellor, undesirable political appointments might result. But although such may have occurred in the past, surely the remedy for the future, if indeed remedy should ever be necessary, lies in the force of public opinion as expressed through the legal profession. It is to be hoped that it is not a question of patronage which is delaying the appointment of these three Judges.

15. Before finishing there is one general matter on which I would like to make a few observations. One of the features of our law which has met with much adverse comment is that often it is the litigant who has to make the law—that it frequently falls on the individual to decide an important but hitherto undecided point. The connection of this subject with that of appeals is obvious: often a decision of a higher court, incorrect, but nevertheless binding, stands in the way of the litigant, and in order to get the law correctly settled he may have to appeal right up to the House of Lords. Again, a point sometimes arises which affects thousands of persons in the community, e.g., some point under the Rent Restriction Act, or the Landlord and Tenant Act, or, with a more limited scope, a point under the Income Tax Acts. The litigant who wishes to have this point authoritatively settled may have to appeal through several Courts. Or even worse, the importance of the principle involved may affect a powerful Corporation or Government Department so deeply that, even though victorious, the individual litigant may find himself dragged through the hierarchy of the Appeal Courts an unwilling and progressively poorer victim.

16. The fact that litigants are sacrificed to settle the law has often been severely criticised by law reformers. Several continental countries attempt to solve the problem by having an official who represents the Ministry of Justice and who can appeal against a decision given between two parties on the ground that some important principle is involved. Without being prepared at the moment to advocate a reform as sweeping as this, I do think it very desirable that some machinery should be devised by which the Courts could be asked to decide on some point of law which affects a large section of the community, because if it were possible to have a principle of law authoritatively laid down, it would not be necessary for a private litigant to appeal in order to get this principle decided. Another desirable reform would be the introduction of measures designed to prevent a decision being *bought* by a wealthy litigant. I mean the type of case where a powerful litigant, such as a big company, obtains an erroneous decision in its favour in a Court of first instance; where it is clear that on appeal the decision will be reversed, but where the company is quite willing to pay its opponent all he is claiming, or to pay all his costs (if he is a defendant), because the decision is one of principle affecting a large number of other cases. If this takes place, there results a decision of first instance which bars the way to all those claiming against the company where the same principle is involved. That is the kind of case, and we all know that they happen sometimes, where it would be extremely desirable for an appeal to take place so as to get the law correctly set out.

17. I hope that these few remarks about appeals have convinced you that the law as it exists to-day is by no means satisfactory. I hope also that you take the view that it is part of the duty of a solicitor to ensure, so far as he can, the proper making of the law—in the sense that he should advocate improvement where in his view improvement is needed. As I see it, a solicitor, besides his duty to his clients, owes a wider duty to the public generally, the duty of helping in the improvement of the system of law by which the public is affected. It is not sufficient for him to sit back with folded hands and take the present system for granted; he should assist, or try to assist, in raising the standard of English law. From the very fact that the English legal system is so complicated that only an expert can understand where the defects are, it falls to the legal profession as a whole to reform abuses and remove anomalies. The solicitor is peculiarly fitted to do so, since he comes in contact with the public who are affected by these very abuses, and he can, therefore, from his own experience, point out in what particular ways the system is injurious. This paper, if it has done nothing else, will, I hope, have given an indication of the lines on which, in my opinion, reform of the system of appeals should be approached.

Mr. Charles L. Nordon, LL.B. (London), read the following paper:—

Judicial Dispensation.

It is unnecessary to remind an audience of lawyers that Judicial Dispensation is the third, but by no means the least important of the three constitutional branches of government in this country, namely, Legislation, Administration, and Judicial Dispensation.

Pride in our judicial system is justified. The measure of its accomplishment is not to be found by reference only to the Law Reports or to the Civil Judicial Statistics of actions commenced, prosecuted and judicially decided. For every action instituted in His Majesty's Courts there are thousands of justiciable disputes where process is never entered, the would-be plaintiff or intending defendant eventually being persuaded that his case would not be favourably regarded by His Majesty's Judges.

But admitting, and with gratitude, this high standard of active and silent achievement, it is nevertheless useful, from time to time, to pass under review the progress of our judicial system, through its constantly evolutionary forms, and to consider whether we may contribute by our deliberations to still further improvements in what should be the coveted right of every enlightened citizen, namely that justice shall reign triumphantly throughout the land.

The necessity for such improvement is officially admitted by the Lord Chancellor's recent appointment of the Business of the Courts Committee. It is not the purpose of this address to comment on the recommendations of the eminent lawyers of whom that Committee is composed, but rather to suggest whether there be other directions in which the reformer may usefully explore.

Perhaps the solicitor has greater opportunities than others of assessing the requirements of Judicial Dispensation from the psychological point of view of the community at large. He is necessarily brought into close and intimate contact with litigants and would-be litigants. He has to suffer with them their pre-trial anxieties, to administer consolation when their cases fail, and to felicitate their successes.

As an officer of the Court the solicitor plays no small part in the Administration of Justice. For him "the price of Empire is eternal vigilance." I have ventured on a previous occasion to suggest that the solicitor is the Cinderella of the legal profession. On him falls the task of dressing up the litigant in such robes as may justify his successful appearance at court. But no fairy godmother ever comes to transform his workaday toil into the dazzling beauty of the Bar or the scintillating wisdom of the Bench. He must remain content, when he can, with the consciousness of good work well done and in the satisfactory achievement of preventing or redressing injustice.

Following the Act of Settlement of 1700, the English Judicial System is now the statutory creation of the Supreme Court of Judicature Act, 1925. Section 4 prescribes six Chancery Judges, eighteen King's Bench Judges and three Probate, Divorce and Admiralty Judges, who can be transferred from one division to another under Royal Sign Manual. Section 6 prescribes the Court of Appeal consisting "*ex officio*" of the Lord Chancellor, The Lord Chief Justice, The Master of the Rolls, the President of the Probate, Divorce and Admiralty Division and five ordinary Lords Justices of Appeal. The House of Lords is not, of course, dealt with in the Supreme Court of Judicature Act. It is an inherent part of the constitution exercising the appellate jurisdiction of the King in Council, as "the fountain head of all justice." The Lords of Appeal in Ordinary are appointed by Letters Patent under the Appellate Jurisdiction Act of 1876. Like His Majesty's High Court Judges they hold office "during good behaviour," the formula substituted by Section 12 of the Supreme Court of Judicature Act, 1925, for the more picturesque "*Quamdiu se bene gesserint.*" The County Court Judges must relinquish office on attaining the age of seventy-two (County Court Judges Act, 1919). This discrimination in favour of the High Court Judge is puzzling.

The "*Quamdiu*" rule is intended to ensure the independence of the Judges. But the recruitment of the judiciary from men of the highest degree of probity is the real safeguard. The "*Quamdiu*" rule is capable of working in precisely the opposite direction. The Lord Chancellor is responsible for the selection of His Majesty's Judges during his tenure of office (except for the Lord Chief Justice who is selected by the Prime Minister). Parliament may increase the number of Judges. The Lord Chancellor selects the new appointees who, by Royal Sign Manual, may be assigned to any branch of judicial work. The ambitious barrister embraces one or other of the political parties knowing, from experience, that course to be one of the surest roads to the judicial Bench. Once on the Bench he is there for life, or until he himself as sole arbiter decides that physical or mental infirmity (which in the case of the County Court Judge is presumed (*supra*) to set in at the age of seventy-two) makes his resignation desirable.

Other writers have called attention to the risks inherent in "Legislation by Litigation"; for a judicial decision affects the property and liberty of the citizen just as effectively as an Act of Parliament. And, indeed, it requires an Act of Parliament to remove some of the anomalies of Judge-made law, such, for example, as that the death of the sufferer relieves the wrongdoer from liability ("*Actio personalis moritur cum persona*"); and the inability of one party held liable for a legal wrong to obtain any contribution from his fellow wrongdoers ("No right of contribution between Joint Tort-feasors").

Mr. D. N. Pritt, K.C., in a recently contributed publication, argues that in any progressive civilisation the legal system must gradually and insensibly accumulate defects, the elimination of which may, in the learned and experienced author's view, involve a wholly different system of training and appointment for Bench and Bar alike. He cites, as evils calling for removal, uncertainty, delay and expense, the main cause of which is the volume of "case law," encouraging appeals and putting the litigant of small means at so serious a disadvantage.

There can be no doubt that the continued outpouring of "case law" in ever-increasing volume adds considerably to the task and expense of conducting litigation. By its nature "case law" is necessarily casual, for the declaration of a juridical principle is left to await the chance hearing of a dispute in which it arises for exposition. Thus, in many cases, the rights of the citizen are to some extent affected by his luck in being able to call in aid the words of a judge in another case unearthed from irrelevant matter in the tomes of the Law Reports. When it becomes necessary to lay down legal principles the Legislature should do so by declaratory Acts of Parliament, leaving the judges an unfettered discretion to do what they think right on the facts, documents and Acts of Parliament relevant to the dispute before them. May it not be preferable to utilise the wisdom and research of the judicial bench as fit subject-matter for legislative proposals initiated without waiting for a particular case to come before the bench. Moreover, no litigant likes his name perpetuated in the Law Reports as having been involved in a legal dispute, the judgment in which lays down a new judicial principle, any more than a hospital patient likes to be surgically operated before a class of students.

And yet another Daniel has more recently come to judgment in the person of Mr. Sergeant A. M. Sullivan, K.C., who, in a trenchant letter published in *The Times* of 8th August, 1934, reiterates "the first duty of Government is to provide Tribunals where the Citizen can assert his rights"; refers to what he calls "the pleasing delusion that the Courts of Justice are at his service to afford prompt remedy for wrong done"; and quotes Lord Darling's aphorism "The Courts are open to all, just like the Ritz Hotel," in support of his, the Sergeant's, conclusion that "for the ordinary Citizen the scandalous and unnecessary cost of litigation forbids approach to any legal tribunal."

Few practising solicitors would agree with this denunciation or with the Serjeant's suggestion that we might sweep away "the whole pretentious panoply of the Courts of Justice." Yet, if such views are sincerely held and if in the open columns of *The Times* it is asserted that "continued refusal to make the Courts effective and promptly available for the King's Subjects, lends countenance to the charge that the Administration of Justice is a game among wealthy people for the benefit of a few privileged lawyers" and the question is put, and left unanswered, "can this great Kingdom afford to have its subjects discontented with the administration of the law?" a duty is cast upon very practising lawyer to see what he can do to refute, or remedy the cause of, such a damaging accusation.

The Judiciary is supreme throughout the realm. Parliament may decree, but only the judiciary can enforce. The intention of Parliament is always subordinate to the judicial interpretation of its enactments. There can in this country be no deprivation of property or liberty save by judicial decree (with, perhaps, such minor exceptions as "distress" and temporary arrest, pending trial, of a visible offender against the peace).

Shrewd observers from foreign countries are impressed with the majesty and dignity of our judicial proceedings though they may be puzzled by certain anomalies of long usage, such, for example, as the combination in one Division of Probate, Divorce and Admiralty cases, which have nothing in common, and the trial by Chancery Judges (whose education and general practice would have lain in the realm of trusts, wills, settlements and property) of patent actions involving a nice discrimination and judgment upon highly scientific problems, the solution of which may be quite outside judicial principles.

Just as only foolish parents assert the perfection of their children, so only the narrow-minded lawyer is unable to perceive from the fruits of his own experience directions for still further improvement in Judicial Dispensation.

The growth of arbitration is in some respects a criticism of our judicial system. The arbitrator is expensive; the Judge is free, for he is paid by the State. Why, then, do parties to most commercial contracts stipulate for the settlement of their disputes by the award of a private arbitrator? Cost hardly enters into the question. An arbitration is usually as expensive and sometimes far more expensive than a lawsuit. But the procedure in arbitration is thought by some to be more elastic. Above all, it is private.

There can be no doubt that many wrongs are suffered, and redress forgone, by the fear that the sufferer's affairs may, through the publicity of the Law Courts, be broadcast to all

and sundry, and expose him to the gossip of those who obtain an inadequate impression of the facts giving rise to the lawsuit and of the part played therein by the litigant.

Press publicity is thought by some (though not by the writer) to be an essential safeguard against judicial injustice. When, however, we consider how very casual is this Press publicity, that view is hardly supportable. One litigant may have the good fortune to escape a very sordid case without any Press publicity at all. Another, because he holds an honoured or notorious name, is certain to attract the tender attentions of the Press, who have complete licence as to what part of the proceedings they will report and what they will omit. Full many a litigant has smarted under the publication of a rhetorical exposition by eloquent counsel of his opponent's case which may not however be borne out by the evidence, seldom reported *in extenso*.

We remember that in the ancient "Trial by Ordeal" the accused was required to carry a red-hot bar of iron. If within three days his hand had healed, he was innocent. Otherwise, he was guilty. And so to-day in a certain class of case the thick-skinned litigant scores over his more sensitive brother.

The view the writer has formed on this aspect of Judicial Dispensation may shortly be thus stated :—

(1) There should be no address by counsel before the evidence has been tendered and tested by cross-examination. The reading of the Pleadings will quite sufficiently define the issues upon which the attention of the tribunal requires to be concentrated whilst hearing the evidence. Indeed, that is the whole object of Pleadings.

(2) If Press publicity is to be allowed at all on a private citizen's dispute, it should be confined to a précis of the issues as defined by the Pleadings and the eventual judgment of the Judge or his summing up and the jury's verdict in the case of a jury trial.

In a criminal trial the risks attendant upon Press publicity are serious. The jury will usually have read the reports of the magisterial enquiry, which nearly always is only the case for the prosecution (for but seldom does the accused give evidence or call witnesses before the Magistrate or is his legal adviser in a position adequately to cross-examine the prosecution's witnesses). No newspaper editor, under penalty of contempt of Court, may state his own views upon a case awaiting judicial decision. To do so would, it is considered, affect prejudicially the free judgment of the Court. Why, then, should it be permitted to report the magisterial enquiry which must have just the same tendency ?

The impression that litigants or witnesses run the risk of being held up to public opprobrium is a serious blow to the administration of justice. For example, in an action tried in May, 1933, a surgeon on the staff of one of the leading hospitals, having given expert surgical evidence, is reported to have been told by counsel in cross-examination : "Generally speaking, the evidence you have given in regard to surgery is appalling." Witness : "My Lord, I am being insulted." The Judge : You are not being insulted, and if you are I will take very good care that counsel knows it."—(*Daily Telegraph*, 18th May, 1933.) Small wonder that this witness stated to the Press afterwards : "If the courtesy extended to members of the legal profession when they visit the hospitals is the same as that accorded to medical witnesses in Court, I should think it an outrage."

In another case widely reported, counsel for the defendant told the plaintiff that he was "a blackmailing rascal." This was hardly the function of counsel, whose duty it is to deal with the *facts* on which the jury have to pronounce their verdict.

In another recent case, the Court of Appeal had occasion severely to criticise the nature of counsel's cross-examination of witnesses who were there to do their duty in giving the best evidence they could of the facts, and who ought not, therefore, to have been subjected to personal attacks by counsel.

It is sometimes apt to be overlooked that witnesses and litigants labour under some disability, both physical and intellectual. Unless possessed of a nimble wit and agile mind they may not be able to follow the trend and bearing of the questions put to them in cross-examination, with the result that from sheer nervousness and fear they may do their case less than justice. If, therefore, the cause of justice is to be served they should be treated with the utmost courtesy, consideration and assistance both from the Bench and the Bar.

The undue and uncertain length of time taken by judicial trials adds to the cost and occasions inconvenience not only to the parties, their witnesses, solicitors and counsel, but also to those in the following cases awaiting trial. The consequent inability to forecast the actual date on which a case will be heard leads to the eleventh hour necessity for counsel to return his brief or to his fulfilment of an engagement "elsewhere," leaving his client's case in the hands of an inexperienced or at all events unselected "devil." The interests of the litigant are bound to suffer.

What then is the remedy ? The present judicial court hours are short. The Attorney-General admitted, in the House of Commons on the 26th July, 1934, that, except for a very few weeks of the legal year, over half the Courts in the King's Bench Division are empty. Allowing for luncheon intervals, interrupting applications, etc., the effective time devoted to judicial trials does not usually exceed twenty hours per Judge per week. Much of that time is devoted to the reading of documents, Acts of Parliament, and reports of decided cases which hardly need to be read aloud in the presence of counsel, solicitors, parties and witnesses if the relevant documents are first agreed and delivered beforehand to the Judge together with a list of all the cases and Acts of Parliament on which counsel on either side intend to rely. And even the evidence-in-chief can be put in affidavit form on which the Deponent can be cross-examined to test his veracity. If, then, the Court hours were uniformly from 10 to 6, most cases could be heard in one, or even half, a day, judgment being reserved to be delivered after any further necessary examination of the documents and authorities. The troublesome and expensive waiting in the Court corridors might be avoided if the Court Clerks could telephone to solicitors and counsel with reasonable notice the hour at which their attendance is required.

And now may I conclude with a few suggestions submitted for the consideration of those charged with the task of reviewing our judicial procedure in the High Court.

(1) Immediately following the Pleadings defining the issues for trial the relevant documents should be copied and delivered with the Pleadings to the Registrars, the relevancy of any disputed document to be settled by the Master, subject to review by the Trial Judge.

(2) The parties to deliver to each other and to the Registrar for the Judge's use a list of the statutes and decided cases on which they intend to rely.

(3) Evidence-in-chief to be by sworn statements or affidavits, originals to the Registrar and copies for the opponents. The deponents must at the trial submit themselves for cross-examination if so required. The cross-examination would be taken down and transcribed by an official shorthand writer in order to save the time of the Judge and the parties. This procedure would ensure greater care in the presentation of evidence-in-chief than trusting to the inspiration of the moment. Cross-examination would be more effective, for the opponent would have more time to study and digest the evidence-in-chief and compare it with the written documents. The undesirable element of "surprise" would disappear.

(4) Before the trial the Judge would have studied the pleadings, relevant documents, affidavits, statutes and cases, and the only steps to be taken in open court would be the cross-examination and addresses on the evidence and arguments on the law.

(5) Court hours ordinarily should be from ten to one, and from two to six. This would save time and mental effort in the picking up of the threads in an interrupted case. Both judges and counsel need at least an hour's mid-day rest.

(6) The hearing of a case should only commence at ten or two. Any broken periods of a half-day should be available for judicial cogitation.

(7) If counsel duly briefed finds himself under the necessity of appearing in another Court, his client should *ipso facto* be entitled to an adjournment or to his solicitor's right of audience. He should not be compelled to leave his case in the hands of an unselected substitute or "devil."

(8) It should be the exception rather than the rule for membership of Parliament to lead to the Judicial Bench. The busy barrister must frequently sacrifice his clients' interests by attendance in the House of Commons, or alternatively neglect his Parliamentary for his Court duties, neither of which is in the public interest.

If justification is needed for this paper, it is to be found firstly in the Royal Promise in "Magna Carta" :—"To none will we delay, defer nor sell right or Justice" ; and secondly, in the Coronation Oath as settled at the Revolution :—

Question : Will you to your power, cause law and justice, in mercy, to be executed in all your judgments ?

Answer : I will.

Whilst those solemn and dignified words ring truly through the land, the cause of British justice will be safe and will remain the subject of admiration and envy in every quarter of the globe.

Sir REGINALD POOLE expressed profound disagreement with a number of Mr. Nordon's suggestions. The reports of

criminal proceedings before magistrates were, he said, often of great value to persons dealing with criminal matters in convicting a criminal and collecting evidence that might not be ready to hand. On the question of court hours, Mr. Nordon might be physically stronger than many solicitors who had some experience of litigation, and be able to sit in court from ten to one and two to six and do his own work afterwards. Sir Reginald, however, was certain that after a week of such a life he himself would be dead, and that many of the judges would share his fate. He could not agree that documents should be submitted to a master for decision on which were relevant. Documents increased or diminished in importance as the case went on, and the relevance of a particular document could only be decided by the trial judge after hearing evidence on both sides. The proceedings of the Provincial Meeting were widely reported, and he would not like it to go out to the Press that Mr. Nordon's proposals, because they were not heavily criticised, therefore met with the general approval of members.

Mr. T. Douglas Garrett disagreed that evidence-in-chief could usefully be given by affidavit. The method, he considered, would be tantamount to taking a witness's proof, numbering the paragraphs, putting it on oath, and tendering it as his evidence. Every solicitor with experience of litigation knew quite well that a witness might say one thing in the office and a quite different thing in the witness-box, and that in many cases his evidence in court was nearer to the facts than what he said in his proof. For this reason oral examination as well as cross-examination was an essential element in ascertaining the truth.

On one point, however, he did agree with Mr. Nordon. He considered that where no question of law but only of fact was involved, and there was no jury, and the judge had read the pleadings, the witness might be put into the box at once, as soon as the case was opened. In the Admiralty Court the ship's master was called on opening the case. In many King's Bench cases this example could be followed with advantage and economy of time.

Mr. Robert C. Nesbitt (London) read the following paper :—

The Reform of the Church Courts.

This is the third paper which I have ventured to read at a Provincial Meeting of The Law Society. The first (under the title of " Trustee Companies ") was at Liverpool in 1903. It was the result of experience and examination on the spot of the management of trust business in Australia and New Zealand. Our Public Trustee had not then been established and the hint that possibly in the future we should have in this country a Public Trustee as in New Zealand, or Trustee Companies as in Australia, was thought hardly worthy of notice as a practical proposition by the great men of the day.

The second paper was read at Scarborough in 1921 and dealt with the ever-present subject of solicitors' remuneration ; it was the result of the evidence which at the request of the Council I gave before the Lord Chancellor's Committee presided over by the present Lord Russell of Killowen. Much of what was suggested in that paper has now been adopted, the latest step appearing in the Solicitors' Remuneration (Gross Sum) Order which came into force so recently as June of this year.

Perhaps after forty years in the profession it may not be thought out of place to mention my earlier papers, by way of justification for writing the present one. In the subject chosen I am fortified by a letter in *The Times* of 3rd September, 1932, which contains the sentence : " The reform of its Courts is probably the most urgent task which confronts the Church of England to-day."

What are the courts which need reform ? And in what direction is such reform needed ? Here let me indicate the limits which I impose upon myself in dealing with the subject. This paper in no way concerns itself with questions of doctrine, ritual or ceremonial of the Church of England. It makes no reference to the merits of the *Hampden controversy*, or to such cases as the *Gorham Case*, the *Mackonochie Case*, or that of *The Rev. Charles Voysey*, or the *Bishop of Lincoln's Case*. We will not discuss what might be the result of the severance of the present relationship between the Church and the State so far as the Church Courts are concerned, fascinating though such a topic would be. These matters open a large field for discussion and controversy. The relation between the Church and the State is now under the consideration of a Commission appointed by the Archbishops, which has not yet made its report.

My purpose is far humbler, but the object I have in view is, I think, one well worthy the attention of our profession, in whose hands rests so much of the procedure in the Church Courts and the conduct of cases there.

No one would venture to say anything on the subject of this paper without the most careful perusal of the Reports of the three Commissions on the jurisdiction of the Ecclesiastical Courts. I mean the Royal Commissions which reported respectively in the years 1883 and 1906, and the Commission set up by the Church Assembly which reported in 1926. He would be wise if he read, too, the Report of the Royal Commission of 1832, just a hundred years ago, and the evidence then given. He would then realise how great an alteration has been made in the jurisdiction of the Ecclesiastical Courts during the last hundred years. The Report of the 1832 Commission was a monumental work. In addition to its recommendations it contained an historical survey, both before and since the Reformation, of the utmost value. It is still often referred to.

The principal Acts of Parliament relating to order in the Church are : the Church Discipline Act, 1840 ; the Public Worship Regulations Act, 1874 ; the Clergy Discipline Act, 1892 ; the Benefices Act, 1898 ; and the Benefices (Ecclesiastical Duties) Measure, 1926. The Rules made under these Acts are of importance to us as they specify the machinery by which the words of the Statutes are to be translated into action.

Of these Acts, that of 1840 effected changes in procedure but not in ecclesiastical law. It applied to all offences against ecclesiastical law, whether of doctrine, ritual or otherwise. There was under it a final appeal to Her Majesty in Council, and for the purposes of such an appeal every Bishop who is a member of the Privy Council was to be a member of the Judicial Committee and at least one of the Archbishops or Bishops was to be present at the hearing of an appeal.

The Public Worship Regulations Act of 1874 provided additional procedure for the hearing of complaints concerning ritual. It raised a great parliamentary storm at the time, but does not concern us here.

The Act of 1892 leaves questions of doctrine or ritual to be dealt with under the previous Act of 1840. It provides that ecclesiastical offences against morality are to be tried by the Chancellor in the Consistory Court of the Diocese in which the clergyman holds preferment, with the assistance in questions of fact (if either party so require) of three clerical and two lay assessors. There is an appeal (but on a question of fact only by leave) either to the Provincial Court or to the Privy Council. The limit of time for prosecutions under this Act is five years and the offences charged need not have been committed in the Diocese. In its application to an offence the Act of 1892 repealed that of 1840, but questions of doctrine or ritual were still to be tried, as already mentioned, under the former statute.

The Benefices Act, 1898, provided machinery for dealing with incumbents against whom it was alleged that the ecclesiastical duties of a benefice were being inadequately performed and it made provision for the case of a Bishop refusing to institute a presentee to a benefice for the reasons and on the grounds therein enumerated.

The last of the Acts—the Benefices (Ecclesiastical Duties) Measure, 1926—is by no means least in importance, and in its origin is the most interesting of any. In the first place, it demonstrated the value of the Enabling Act of 1919 and the work of the Church Assembly in getting upon the Statute Book long-needed reforms for which Parliament in these days could not find the time. The initiation of Church legislation into the Church Assembly enables full debate on matters of controversy. Thus, when a measure reaches Parliament—having passed through all its stages in the Assembly and been reported on by the Ecclesiastical Committee—the range of debate is strictly limited and a decision of both Houses can be obtained without undue delay.

Evidence of the rapidity of the present procedure of getting Church legislation on the Statute Book is seen in the cases of the Benefices (Ecclesiastical Duties) Measure, 1926, and the Beneficies (Exercise of Rights of Presentation) Measure, 1931. The latter made the revolutionary change of enabling a Parochial Church Council, upon a vacancy occurring or being about to occur in a benefice, to make representations in writing to the patron as to the conditions, needs, and traditions of the parish, thus providing machinery whereby the parishioners might have some control over the appointment of their incumbent. Another instance of the rapidity of parliamentary procedure is to be found in the case of the Revision of the Prayer Book Measure. Very shortly after its presentation to Parliament by the Church Assembly, where every detail of the measure had been fully debated, it was rejected twice by the House of Commons.

The 1926 Measure (Ecclesiastical Duties) was the eighth measure passed by the Church Assembly and, but for the Enabling Act of 1919, it assuredly would not have reached

the Statute Book when it did. The same remark applies to the Rights of Presentation Measure of 1931.

The last-named measure does not enable any question at issue to be litigated in the Ecclesiastical Courts, the final arbiter on appeal being the Archbishop of Canterbury. The Ecclesiastical Duties Measure of 1926, on the other hand, provides that where ecclesiastical duties (the scope of which we need not here attempt to define) are found to be inadequately performed owing to the negligence of the incumbent, there is a final appeal to a court consisting of the Archbishop and a Judge of the Supreme Court.

A tribunal so constituted could hardly be improved upon. It was originally established under the Benefices Act, 1898, to hear appeals not only by an incumbent who had been held to have inadequately and negligently performed the ecclesiastical duties of the benefice, but also from a Bishop who refused to institute or admit a presentee to a benefice. The Bishop, it will be remembered, can refuse to institute on the ground (amongst other grounds) that the presentee is unfitted for the discharge of the duties of the benefice by reason of pecuniary embarrassments of a serious character, grave misconduct, neglect of duty in an ecclesiastical office, or evil life, having by his conduct caused grave scandal concerning his moral character since his ordination.

The court so constituted, consisting of the Archbishop of the Province and of a Judge of the Supreme Court, is a court of record, sits in public, and at any hearing the legal rules of his evidence shall prevail. The Judge decides all questions of law and his finding as to facts shall be binding on the Archbishop. The Archbishop is to give judgment and that judgment is to be final. I shall again refer to this court later in this paper. The number of cases which have reached this Appellate Court since the measure came into force is not large.

It has been said earlier that under the Act of 1840 there is a final appeal in respect of proceedings under that Act to the Judicial Committee of the Privy Council. The same remark applies to all the other Acts under which proceedings may be taken in the Consistory Court, and here let me say all that I have to say about the final Appellate Tribunal.

The Report of the Ecclesiastical Courts Commission of 1926 devotes a very large part of its contents to a consideration of the constitution of this court. The 1926 Commission was to consider the best method of constituting the Ecclesiastical Courts so as to ensure the confidence of the Church. It endorsed the earlier Report of 1906, containing the emphatic words :—

> " A court dealing with matters of conscience and religion must, above all others, rest on moral authority if its judgments are to be effective. As thousands of clergy, with strong lay support, refuse to recognise the jurisdiction of the Judicial Committee, its judgments cannot practically be enforced."

And it adds that the vindication and enforcement of law in the Church of England cannot be secured, unless a change is made in the present constitution of the Final Court; thereafter the Report indicates how the Final Court of Appeal should be constituted. It recognises that the final appeal is, and from the Reformation has been, from the Ecclesiastical Courts to the Crown, and in my humble judgment is right in not yielding to the suggestion that there should be a separately constituted Ecclesiastical Spiritual Court of Appeal for dealing with questions of ritual and doctrine.

The Commission proposes, however, that, where in an appeal before the Final Court the question arises what the doctrine, discipline, or use of the Church of England is, such question shall be referred to an assembly of the Archbishops and Bishops whose opinion thereon shall be binding on the Appellate Tribunal. This seems to me to be going too far. With the greatest respect for the majority of the Commission making this recommendation, I doubt if it is in the true interest of the Church, and I doubt still more, whether, so long as the present relationship between Church and State remains, it is reasonable to expect that such a proposal would be accepted by the Crown. It is further suggested that the true character of the Final Court, as proposed by the Commission, would be made clear if it were called " the Court of Appeal to the Crown."

Whether the constitution of the Final Court of Appeal be altered or not, there is no call that I can see for altering the procedure under which cases are conducted before it. There are not many; ten in all since the passing of the Clergy Discipline Act, 1892, while the last case of any consequence dealing with ritual, doctrine or the ceremonies of the Church was the *Bishop of Lincoln's Case* in 1890. Indeed this case was the last of its kind of any importance to be heard by the Judicial Committee of the Privy Council on appeal from the Archbishop, who sat with assessors to try it. The hearing before the Archbishop at Lambeth provoked the rather flippant note by Bishop Stubbs, an assessor: " It is not a court, it is an Archbishop sitting in a library."

The present position is that the Report of the 1926 Commission is under the consideration of the Church and State Commission and we must wait to hear what this Commission says to these recommendations. Whatever the Report of the Church and State Commission may be in this matter, and whatever the Church Assembly may decide, it has always to be remembered that an Established Church must be subject to Parliamentary control so long as it retains its position of special privilege.

With regard to the passage from the 1906 Report above quoted, it appears to me to be wrong that " thousands of clergy with strong lay support " should refuse to recognise the jurisdiction of the Judicial Committee of the Privy Council. I can see no grounds for such refusal. It is not due to any question of the integrity or ability of the great judges who are or have been members of the Judicial Committee. It is not due, to use the words of the Archbishop of Canterbury, " to the dislike on the part of any section of the Church of the decisions which in the past it has reached." For nearly 100 years it has existed. It is there for the purpose of interpreting and administering the law as it stands and advising His Majesty. The Judicial Committee is not a court in the ordinary sense : the decisions are always in the form of advice and have no authority until confirmed by His Majesty in Council. It is no part of its functions to alter or amend the law. This is a function wholly and exclusively within the province of the Church Assembly and Parliament. I venture to use the words of the Archbishop of Canterbury in presenting the Report of the 1926 Commission to the Church Assembly : " In a Judicial Court what matters is not policy, but fact and law."

The Judicial Committee is quite as likely—and, indeed, may I say more likely—to reach the right conclusion in law on any matter submitted to it as is the proposed Assembly of Bishops whose opinion it is proposed shall be binding on it.

The Judicial Committee is comprised of the most eminent lawyers of the day, and as we know the most abstruse and diverse problems—particularly in Indian appeals—come before it for consideration.

Let us consider for a moment how this jurisdiction came into being. It arose as a result of the Report of the Commission of 1832, which recommended the transfer of the functions of the Court of Delegates to the Judicial Committee of the Privy Council, in the composition of which Bishops were included. That report and its recommendation had the support of all the leaders of the Church of that day. The Archbishop of Canterbury, the Bishop of London, the Bishop of Durham, and the Bishop of St. Asaph, signed it, and the reasons which led them to do so seem to me still to hold good. Six years afterwards the Act of 1840 confirmed the views expressed in this report.

I cannot conceive of a stronger committee to advise the Crown than the Judicial Committee so constituted. If need be, it could be reinforced with the power of consulting the Archbishops and Bishops in exactly the same way as the House of Lords now consults the judges of the land upon specific questions put to them for their opinion; it could be bound so to consult them on the demand of any one or more of their number present at the hearing of the appeal. However, I see no occasion for this.

It has seemed to me, when reviewing the history of this jurisdiction, that the clergy, and indeed, the leaders of the Church, have sometimes not fully appreciated the large part which, as matters stand, the Bishops can now take in appeals heard by the Judicial Committee of the Privy Council. I can find, for example, no reference in the latest Report of 1926 to the Order in Council made on 28th November, 1876, on a representation presented from the two Archbishops, the Bishop of London, the Lord Chancellor, and others as to the Rules to be made under the Appellate Jurisdiction Act, 1876. This Order in Council provides that in every ecclesiastical case about to be heard before the Judicial Committee, a summons shall be issued to the Archbishops and Bishops to attend as assessors, according to a rota, and there is a provision that no case shall be heard before the Judicial Committee unless at least three of such assessors are present.

I cannot express my view more clearly than has been done by the Bishop of Durham, when he says :—

> " I cannot bring myself to think that the substitution of ecclesiastics for judges as the final interpreting authority of the Anglican standards is likely to serve the interests of justice; "

and I adopt his trenchant sentence,

> " Such a final Court as the Report recommends appears to me quite incompatible with the Royal supremacy as it has been hitherto understood in England, and indeed

only to be defended on the mediæval assumption of the spiritual incompetence of laymen as such."

In cases other than those involving charges of heresy or breach of ritual, or questions touching the doctrine of the Church, it can hardly be said by anyone that a better court could be established as a final Court of Appeal to advise the Crown than the Judicial Committee of the Privy Council under the Appellate Jurisdiction Act of 1876.

Let us leave the subject of the Final Court of Appeal to the consideration of which so much of the 1926 Report is devoted, and look at the older courts which are really more the concern of our profession, viz., the Consistory Court and the Provincial Courts, and with these only so far as they are dealing with matters not concerned about doctrine or ritual. It is in these courts that I venture to think reforms are more needed than in the Final Appellate Tribunal which advises His Majesty in Council; moreover, I do not think the reforms are so difficult to achieve.

Much of the jurisdiction of the Ecclesiastical Courts has since the 16th century been abolished by statute or lost by transfer to the temporal courts—for example, the transfer in 1857 of divorce and matrimonial causes to the Divorce Court, and of testamentary matters to the Probate Court. Crimes such as bigamy and incest, formerly punished exclusively in the Ecclesiastical Courts are now dealt with in the Criminal Courts of the country. But the jurisdiction of the Consistory Court is still considerable. The court exists in every Diocese of which there are now forty-three. It is the Court of the Bishop presided over by the Chancellor, who is appointed by the Bishop and holds office for life, and it is the general court in which are heard cases relating to ecclesiastical matters.

There should be mentioned here what is known as "the Bishop's veto." It is a matter of great difficulty when considering the procedure in the Consistory Court. It may be compared in some respects with the fiat of the Attorney-General, which is required before certain proceedings can be initiated in the Civil Courts. The Act of 1840 conferred upon the Bishops an absolute discretion to sanction or forbid suits being brought under that Act. The veto was renewed under the Clergy Discipline Act, 1892, and exists to-day. Should it be retained? Or should every parishioner have a right of proceeding in the Consistory Court without the need of the Bishop's sanction?

The three Commissions of 1832, 1906 and 1926 have all taken different views as to the retention of the veto. The 1883 Commission was by a majority (twenty-five to eight) in favour of retention, but the Commission of 1906 recommended that it should be abolished, while the 1926 Commission thinks with some hesitation that it would not be wise to dispense with the veto, though evidently they do not like it. It is a question of great importance. It meets us at the very outset of contemplated procedure in the Consistory Courts, and if the evidence on the subject before the several Commissions is considered, the reasons for the diversity of views becomes apparent.

I think the veto should be retained as at present and I can see no need for reform in procedure in this respect. I hold this view mainly on the ground that the Bishop's veto is the only protection which the clergy have from malicious charges and prosecutions and from being involved in useless and oppressive suits. I doubt if its abolition would in reality do much to increase the confidence of the Church in the courts.

In addition to the Consistory Court there are also the Courts of the Archbishops called the Provincial Courts, with a judge appointed in each province by the Archbishop of that province. In the Canterbury Province the judge is officially styled the "Dean of the Arches." These Provincial Courts are Courts of Appeal from the Consistory Courts, and I cannot think that on general principles they form a satisfactory appellate tribunal. An appeal from one judge to another judge is unsatisfactory. An appeal from a County Court judge to a single judge of the High Court would, I feel sure, find no supporters, and I think that the appellate jurisdiction of the Provincial Courts should be exercised by a court more strongly constituted than at present. I think that with the Dean of the Arches should sit two Diocesan Chancellors.

Returning to the courts of first instance, viz., the Consistory Courts, I cannot help feeling that many of the cases which come before it are of such vital importance to the reputation of the clergyman concerned that they are not well fitted as at present constituted to try and decide such a case as, for instance the recent case of the *Bishop of Norwich* v. *Davidson*, and many others which could be cited. Twenty-seven chancellorships are held, I think, by five men, and the remaining are divided between eight or nine. Pluralities in this case may be of advantage as helping to produce uniformity of decision. I do not know.

Under the Clergy Discipline Act, 1892, a clergyman who is convicted of felony or (on indictment) of misdemeanour, against whom an order under the Bastardy Act is made, who is found guilty of adultery or against whom an order for judicial separation is made, loses his preferment without further trial, but in each of these cases the clergyman concerned has had a trial before the ordinary criminal or civil courts of the country, all of which are peculiarly fitted by experience and by their composition to safeguard in every way the interests of the person charged.

I do not, of course, wish to make any sweeping statement about the learned Chancellors of the various dioceses when I say that many of them while eminently fitted by their training and knowledge of ecclesiastical law to decide about the granting of a faculty or questions of doctrine or ritual are by that very training unfitted to preside and act single-handed over a quasi-criminal court where the guilt or innocence of a person charged with a grave moral offence is at stake.

It will not be doubted that a Chancery judge could preside over the Divorce Court with a special jury, but the public and the profession would be a little startled if this were held to be one of his proper functions. Under the Judicature Act of 1873, it was thought that all judges could equally well do all the work of all the divisions of the High Court. But experience, as we well remember, taught us that the sending of a Chancery judge on circuit to preside over a murder trial was not satisfactory, and, indeed, it was early abandoned in practice. Many Chancellors are Chancery barristers who never held a brief in any other division but their own, yet as the Consistory Court is at present constituted, they are charged with the duty of presiding over the trial of cases involving matters far removed from their professional training and experience. The distinguished ecclesiastical lawyers who in our time have filled and now fill the high judicial office of Dean of the Arches were both of them members of the Chancery Bar, and, so far as I know, hardly ever practised away from it.

Fitted though both of them undoubtedly are to preside at trials relating to doctrine and ritual, and to decide such cases, I doubt if the general consensus of professional opinion would regard them as adequately equipped by direct experience for the trial of grave moral issues. Indeed I am not sure that the Commission itself does not recognise this when it emphasises the need in cases other than those involving doctrine and ritual for their trial by judges who have a wide knowledge of civil and criminal law and who are more fully trained in the admission and rejection and sifting of evidence than the judges of a spiritual court are likely to be. The Archbishop of Canterbury, in his speech to the Church Assembly, clearly, I think, held that view.

What then should the tribunal be, if not the Consistory Court of the Diocese? Quarter Sessions has been suggested, or a reference to the Divorce Court presided over by a judge with special professional experience in these matters—in either case it is pointed out that a jury would be available; indeed, a jury was strongly recommended so long ago as in the 1832 Report.

I do not myself favour either of these suggestions. Although the Commission of 1926 makes no reference to what I am about to propose, it can hardly have overlooked the machinery which is ready to hand and could be utilised with very little statutory assistance. There is no difference in the moral offence whether it be committed by a layman or by a man in holy orders: though no doubt guilt is more serious and more damaging to the community in the one case than in the other. The evidence in both cases is the same, and the cases should, it is suggested, be tried on principle by the same tribunal. This, however, is not, I think, feasible in practice, and I suggest the tribunal already mentioned and set up by the Benefices Act, 1898, as being eminently suitable for the trial of these cases. The court under that Act—an Appellate Court it is true—is to consist of the Archbishop of the Province and of a Judge of the Supreme Court. It is a Court of Record, sits in public, and at any hearing the legal rules of evidence shall prevail. The matters which come before it on a refusal by the Bishop to institute, are, it seems to me, precisely the matters which come before a Consistory Court for decision after institution, e.g., grave misconduct and evil life which by its conduct causes grave scandal. Then, again, to this court under the Ecclesiastical Duties Measure, 1926, and not to the Consistory Court or to the Provincial Court, is left on appeal the decision of whether ecclesiastical duties have been inadequately performed owing to the negligence of the incumbent.

It appears to me that confidence in the trial of all cases other than those relating to ritual and doctrine would be increased if the jurisdiction were transferred from the Chancellor of the Diocese to the court which I have just described; as a matter of fact, the cases are not numerous.

It is reports in the press—just as in the case of members of our own profession—that makes them appear so. Such a court is an abiding testimony to the union of Church and State and its decisions (whether subject to appeal or not) would command confidence. On a question of procedure I think there should be power to examine witnesses on commission and also power to administer interrogatories.

Now before I conclude this paper, let me turn to an important question of policy arising out of proceedings in Ecclesiastical Courts—that of the publicity given in the public press to the evidence and proceedings in the case of trials which, for the purpose of identification, I will define as being of the Stiffkey class. For my part, I think the publication should be limited, and I think the limit should be that which now prevails in Divorce Court proceedings.

On this subject a debate arose in the House of Lords after *The Bishop of Norwich* v. *Davidson Case*, and subsequently a debate in the Church Assembly. The latter resulted in the appointment of a Committee which recommended that the provisions of the Judicial Proceedings (Regulation of Reports) Act, 1926, should be extended to cases in which a clergyman is accused of immoral conduct or of an offence against morality not being a question of doctrine or ritual. I agree with the recommendations of this Committee, and perhaps I am the more entitled to do so because of the part which I took when in the House of Commons in helping Sir Evelyn Cecil (now Lord Rockley) in the promotion of the 1926 Act. The matter of publication and practice was most exhaustively examined and every point of view considered. It seemed quite simple; it was indeed most complex.

The Act reached the Statute Book in its present form through the Parliamentary skill of Sir Evelyn Cecil, but, as in all cases of this kind, concessions had to be made to opponents and to those who were interested in preventing the progress of the Bill. I know it is said that truth and justice are more important than either public morals or the convenience of society, but I cannot think that either truth or justice would be put in jeopardy should the recommendations of the Church Assembly Committee be adopted and a measure following the 1926 Act put upon the Statute Book. Indeed, I think grave scandal and damage to the Church would be avoided.

As a result of what I have ventured in this paper to put before this Provincial Meeting of The Law Society on the subject of the Reform of the Ecclesiastical Courts, I think the following suggestions for reform might well be considered:—

(1) Let the jurisdiction of the Consistory Court in all matters, other than those relating to the granting of faculties, and questions of ritual and doctrine, be transferred to the court established by the Benefices Act, 1898, consisting of the Archbishop of the Province and a Judge of the Supreme Court. Let the Consistory Court act on the judgment of this court as if it were its own decision and notify the Bishop that the defendant has been found guilty so that the requisite sentence may be pronounced.

(2) Let the appeal in all ecclesiastical matters dealt with in the Consistory Court be not from that court to a single judge, that is to say, to the Dean of the Arches in the Province of Canterbury or to the Official Principal in the Province of York, but to a court consisting of three judges, viz., two Diocesan Chancellors with the Dean of the Arches or Official Principal presiding with a final appeal, as at present, to the Judicial Committee of the Privy Council as constituted by the Appellate Jurisdiction Act, 1876.

(3) Let the provisions of the "Judicial Proceedings" (Regulation of Reports) Act, 1926, be made to apply to all proceedings where a clergyman is concerned which are of the nature defined in that Act.

Mr. RUTLEY MOWLL (Dover) said that he was a member of the Church Assembly and that Mr. Nesbitt's valuable paper would prove a handbook to all interested in these matters. He recalled that the lawyers had nearly all been in favour of extending the provisions of the Judicial Proceedings (Regulation of Reports) Act, 1926, to cases in which a clergyman is accused of immoral conduct. The bishops had, however, been equally divided and so the recommendation had not been carried.

Mr. C. L. NORDON (London) welcomed Mr. Nesbitt's restoration to health and hoped that he would soon resume his place on the Council.

Mr. NESBITT briefly replied.

Mr. HILARY NOBLE (London), read the following paper:—

COMMENTS ON COMPANY LAW.

On 13th April, 1899, Sir Michael Hicks-Beach, the then Chancellor of the Exchequer, opened his Budget speech by saying: "Everyone from a Peer downwards converts himself into a Company." When he spoke, Company Law was scarcely out of its infancy.

When the Wilfred Greene Commission issued their report the following figures were given. The total number of companies with a share capital on the register at 31st December, 1924, was as follows:

England	84,382
Scotland	6,536
	90,918

To-day the position is as follows: The figures of the forty-third annual report of the Board of Trade on matters within the Companies Act, which appeared in "*The Times*," 13th August last, deals with the year ended 31st December, 1933. During that year alone the number of companies registered was 11,936 as compared with the 10,635 in 1932. The total nominal capital with which these companies were registered also showed an increase, being £98,954,522, as compared with £73,044,016 in 1932. These figures obviously show that the limited liability company is becoming more and more important.

It is unnecessary for me to labour the advantages of limited liability or to point to matters well known to an assembly of lawyers, such as that a business turned into a company can be more easily carried on in certain events, such as death or lunacy, than an unincorporated concern; or that the advantages of a partnership can be nearly always obtained under the Companies Acts without the disabilities of partnership law and personal liability for the faults of a partner; that employees can share in profits and not be taken into partnership; that new capital can be more easily obtained for most ventures; that small sums can be invested in large companies; that sometimes death duties through the intervention of a company can be legitimately lightened (although this was largely foiled by ss. 34 and 38, Finance Act, 1930). These and other advantages are matters well known to a lawyer, but what is sometimes forgotten by lawyers when they deal with any particular case is the larger question of how far Company Law is moulding trade and business in most unexpected channels. The figures quoted above merely indicate this development.

The trend of industrial specialisation has made it clear that limited liability by enabling business men and idle capital to become sleeping partners in a variety of undertakings has become one of the most important developments in our country's law, playing a large part in the economic and financial life of the country.

Much has been written about the formation of companies, the prospectus, the promoters and directors. But as the smooth and honest working of the Companies Acts is very important to the legal profession, not only to those solicitors who specialise in company work but also to the rest of the profession who may at any time act for clients who have lost money by dishonest promoters, many of whom abuse the protection given by the Companies Acts, I propose to deal with companies already formed and carrying on business; to consider some points of importance to shareholders and the public; and finally to refer to directors. It may be confidently stated that in nearly every company scandal solicitors are unjustly blamed for the defects of Acts passed by Parliament.

PREFERENCE SHARES.

Preference shares are to many an attractive investment. Provided the dividend is regularly paid out of profits the investor knows his income exactly, but often rights other than dividend rights under his shareholding are forgotten, namely, what rights he possesses in a reconstruction or a winding up.

Generally his rights in a liquidation are clearly defined. Ordinarily he is entitled under the Articles to all arrears of dividend and the repayment of all his capital before the ordinary shares receive anything. Unfortunately his rights in a reconstruction are seldom defined although reconstruction happens far more frequently than liquidation in the case of public companies. For one reason or another reconstruction occurs, while it is a comparatively rare thing for a business to disappear altogether. Therefore it is of the utmost importance that any rights a preference shareholder may have should be stated in the plainest possible terms. It is suggested that the draughtsmen of most Memorandum and Articles are to blame where it is not so.

The recent important case of *Hughes* v. *Union Cold Storage Company Limited* has driven this point home. In that case there was no objection to the proposal to reduce the dividends on the preference shares but only to the terms of the offer made. £130,000 a year would have been saved in preference dividend under the scheme in return for a cash payment of

£1,300,000 by the ordinary shareholders. The ordinary shareholders and the lessors of the farms in South America as was disclosed in the proceedings would have derived the real benefit of the saving. Although the ordinary shareholders were to be limited to a 7 per cent. dividend for five years this would not have involved them in any real loss since any surplus over and above the amount required to pay the 7 per cent. dividend would have remained in the business undistributed.

A glaring case of this kind must discourage investors from placing their money in preference shares. In cases where there are insufficient assets to justify a debenture issue, preference shares are usually the only form in which capital can be raised. It is, therefore, a very useful type of security. Preference shares of many companies stand on a 4 per cent. basis, which represents cheap finance for industry. But they would not stand on such a low percentage-paying basis if it became the practice to invite holders to vary the terms and to accept their dividend on capital less than they are entitled to, or less than its market value, in order that other interests might benefit. The urgency of this question from the industrial and financial point of view has been ably put forward by the Financial Editor in *The Times* of 23rd July, and is, I understand, being carefully considered by the Association of Investment Trusts, The Shareholders Association and The Shareholders Protection Association.

Cases such as the *Union Cold Storage Case* would not occur if the rights of preference shareholders were clearly stated. At present the position is this. While the shareholders receive their dividend regularly, of course no question arises; when the company is wound up their position is also usually clear. But in cases of reconstruction their rights have been vague and undefined. As these rights are a matter of contract for which the solicitor is to a certain extent responsible it is submitted that far greater attention should be paid to defining these rights.

Even, however, if the rights of these shareholders are not defined in the Memorandum and Articles they may be altered by compromise under s. 153 of the Companies Act, 1929. A majority of three-fourths in value and the sanction of the court is necessary under this section.

Under s. 61, sub-s. (1), however, if "provision is made by the Memorandum or Articles for authorising the variation of the rights attached to any class of shares in the company, subject to the consent of any specified proportion of the holders of the issued shares of that class or the sanction of a resolution passed at a separate meeting of the holders of those shares, and in pursuance of the said provision, the rights attached to any such class are at any time varied, the holders of not less than 15 per cent. of the issued shares of that class, being persons who did not consent to or vote in favour of the resolution for the variation, may apply to the court to have the variation cancelled" . . . Application to the court must be within seven days of the resolution and the variation does not have effect unless and until it is confirmed by the court. The court may disallow the variation if it is satisfied that the variation would unfairly prejudice the shareholders of one class represented by the applicant.

On p. 132 of "Buckley on the Companies Act," s. 61 is discussed as follows: "It may perhaps be doubted whether the rights conferred by the section upon minority shareholders of a class will be of much practical value at least where the shares of the class are widely held by the public." Actually in *Hughes and Union Cold Storage Co., Ltd.*, art. 65 contained a variation of rights clause, but the plaintiff did not apply under the section, for the preference stock was widely held by the public, and seven days as allowed by the section made it practically impossible to comply with the section. It is submitted that this section intended to be a safeguard for a minority of shareholders, particularly preference shareholders, has not fulfilled its purpose, and that s. 61 requires amendment. In its present form the minority can be deprived of practically all rights.

Take an example within the experience of my firm. A company "A" had five directors who held between them practically all the ordinary shares of 1s. each and also had a minority holding of £1 preference shares bearing 7½ per cent. interest. To improve the position of the company it was proposed that the interest paid on the preference shares should be reduced from 7½ per cent. to 5 per cent. although the ordinary shares were not asked to give up any rights whatsoever. The directors called a meeting of the preference shareholders and sent out numerous forms of proxies which many shareholders signed. Many shareholders, especially those who found it difficult to get up to London, did not attend the meeting and the resolution was carried in spite of the protests of many of the preference shareholders who were supported in the Press. I strongly suggest that companies should not be allowed to defeat the objects of s. 61 of the Companies Act and that the time limit should be extended to one month.

Non-Cumulative Preference Shares.

Holders of non-cumulative preference shares are in a peculiarly defenceless position, and very often the ordinary shareholders gain by their loss.

A company, for example, makes a small profit, and the question of declaration of dividend arises. It is possible to declare a dividend on the non-cumulative preference shares or to adopt the course of placing money to reserve either by drastically cutting down the estimated value of assets and making a very ample provision for liabilities or by invoking platitudinous phrases about sound finance. If the second course is adopted the non-cumulative preference shareholders get no dividend and the ordinary shareholders reap the benefit of the extra capital put into the business.

It must be remembered that a dividend to shareholders of non-cumulative preference shares which is passed over is lost to them irrevocably and no matter how well the company does in the future they will never be paid anything in respect of that year.

I have considered this aspect to the very best of my ability, and I have referred to persons who are competent to give a valuable opinion, and I am very strongly convinved that the creation of non-cumulative preference shares should not be permitted.

The directors always have the power to pass dividends, but if after a bad period the company recovers, it would seem more equitable if all preference shares received the dividends in arrear before the ordinary shares received any.

A further point to be considered is the responsibility it places upon directors to act fairly towards the holders of non-cumulative preference shares, as the position of the company must always be stronger if they are not paid.

Debentures.

Debentures are extremely popular and it will surprise most people to hear that far more money is placed in debentures than in shares. Theoretically, of course, they should be an ideal security, provided the valuations are reliable. In practice the position is often different. The classic illustration was the Royal Mail Debentures, but without reiterating the facts of this case it is well known that there are many cases of reconstruction, or winding-up, where there has been disclosed the story of assets slowly fading away while dividends are declared on shares, and debenture-holders are punctually paid their interest out of the capital resources of the company.

In the evidence before the MacMillan Committee on "Finance and Industry," Sir Robert Kindersley was asked whether he had found various industrial undertakings in this country hampered by the existence of "dead wood." He replied: "I think undoubtedly that in a great number of cases it is so. They are often over-weighted by debentures and have been slowly bleeding to death. They have been paying their interest on debentures as they have got to do out of capital, because they have had no earnings to pay it out of, which is certain death in the end. I think a great many of them have slowly bled to death in that way."

He adds that only a drastic operation will right the position. He meant, of course, reconstruction, in which debenture-holders generally suffer.

The frequent watering down of the rights of debenture-holders is clearly a serious defect in the present administration of company law and several alterations in the rights of debenture-holders should be made, similar to those I have suggested in the case of holders of preference shares.

Is not the whole advantage of a debenture completely lost if a company can slowly bleed to death with the debenture-holders unable to intervene? Yet while interest is regularly paid the holders have no legal ground for complaint. In some trust deeds the trustees have power to certify that the company is improperly run, etc. But clearly only in exceptional circumstances would such a course be taken.

Trustees can sometimes appoint a receiver where the assets are endangered and, of course, the court may always order the security of a debenture to be enforced. What precisely, however, is meant by jeopardy is very difficult to say. But in the *New York Taxi Company Limited* [1913] 1 Ch., it was held that even if the realisable value of all a company's assets were "wholly insufficient to pay the principal and interest in full" it would not be a sufficient reason for appointing a receiver on the ground of jeopardy. This decision would cause a trustee to hesitate before appointing a receiver in pursuance of such a power, as jeopardy has a very limited meaning.

Perhaps a more serious complaint is that trustees' interests and duties sometimes conflict. Mr. Justice Maugham commented adversely on this in *Re Dorman Long*, November,

1933. There Barclays Bank were trustees for the debenture-holders and at the same time acted as bankers for the company. A trustee should never be in a position in which his interest and duty conflict, but in company law and practice there are frequent examples of trusteeships where almost certainly the trustees' interests and duties will conflict.

In the *Royal Mail Case* there were numerous examples of conflicting interests and duties which are too long and complicated to deal with here, but it is usual for directors to be trustees for debenture-holders and where a trust deed contains a provision, such as that referred to above, empowering the trustee to certify that the company has not been carrying on its business properly, etc., it might be the duty of the director in his capacity as trustee to certify that the trustee in his capacity as director had been improperly and inefficiently conducting the business of the company.

Hitherto I have been dealing with the need of protecting debenture-holders against the inefficient or dishonest administration of companies whose securities they hold; there is, however, at least one instance arising generally in the case of private companies in which the public requires protection from a particular class of debenture-holder. To describe it it is necessary only to quote from the judgment of Maugham, J., in *Patrick and Lyon Limited* [1933] 1 Ch., at page 792. "It is not high-minded for a person who is forming a company to form it with a very small capital and to cause the company to purchase his stock-in-trade by an issue of debentures to himself; but that has never yet been held to be fraud, and for some reason which I do not understand it has not been prohibited by the Companies Acts." The quotation is complete in itself and is a plea from a high source for protection not of the debenture-holder but of the public.

It will have been noticed that I have criticised the drafting of certain clauses in Memorandum and Articles of Association, and in this respect, I should like particularly to call attention to the number of printers who sell forms of Memorandum and Articles of Association, very often settled by Counsel, which it is supposed can be adopted for the use of any and every company without the necessity of consulting a solicitor. It is becoming a common practice for chartered accountants to undertake the formation of companies and themselves to settle the Memorandum and Articles of Association. Repeatedly this causes the company the expense of altering their Memorandum and Articles. What is more important is that it leads many directors not fully conversant with Company Law quite innocently to do acts which are *ultra vires* the company.

There are innumerable instances of trouble arising in this way. I should like to suggest to our Council, who are so active in their efforts to improve the position of solicitors, that they should consider what steps might usefully be taken to end this practice. There are three ways among others in which this might be done:—

(1) A letter sent by our President to the Press pointing out the dangers of unqualified people doing solicitors' work.

(2) A letter sent to the Bar Council suggesting that Counsel should try so far as possible to secure that Memorandum and Articles of Association settled by them should not be used for this purpose. Incidentally these forms are a not very desirable advertisement for Counsel and are frequently long documents, so that the charges of the printers who issue them will be in proportion to their length.

(3) A letter might be sent to printing firms pointing out the dangers of the practice, and suggesting that solicitors will be asked not to employ printing firms who carry on such a practice.

Accounts.

The question of accounts has been the subject of numerous irresponsible writers and reformers on Company Law. Their efforts are chiefly confined to clamouring for a great deal of detailed information which would add several schedules to the twelve Schedules already appended to the Companies Act and be a burden to all concerned. They appear to foregt that the Companies Act already contains very wide powers and dutes in the matter of accounts for the protection of the public.

Section 123 requires that the directors of every company shall at some date not later than eighteen months after the incorporation of the company and subsequently once at least in every calendar year lay before the company in general meeting a profit and loss account. The wording of the section continues at some length, but the gist of the section is that a profit and loss account must be set before the shareholders.

As I propose to show, this provision of the Act is an outstanding example of the failure of a statute to achieve its purpose. What is a profit and loss account? A surveyor of taxes certainly knows what it is and extracts painful results therefrom. Directors, auditors and solicitors of a company know perfectly well what goes into its profit and loss account and study them carefully, getting considerable information from them. The section was undoubtedly intended to hand this information on to the shareholders. In practice, the small observance of this section results in no useful information reaching the shareholders.

This is perhaps a challenging statement and may be read as a direct attack on accountants who are primarily responsible for the accounts laid before shareholders purporting to comply with s. 123, and having regard to the ss. 122–274 which impose severe penalties on the director of a company who fails to take reasonable steps to ensure that the company's accounts comply with the requirements of such sections, the subject is one of first-class importance. It is, therefore, necessary for me to give a very full exposition of what precisely I mean by saying the section does not fulfil the objects for which it was designed.

Before writing this paper I studied various company reports. To illustrate my argument I have chosen examples from reports of actual companies and about which I know no more than the general public. When I use their accounts to illustrate the argument, it is not to suggest that they differ in any way from the practice of hundreds of other companies. They are chosen at random, as typical forms of account. There exist hundreds of other reports which illustrate the same point.

For example, the report of the directors of X Co., a most reputable and well-managed company, was placed before the shareholders at the ordinary general meeting.

The right-hand column of the profit and loss account read as follows:—

	£	s.	d.
By profit on trading, royalties, income on investments, etc., and dividends from subsidiary companies, after deducting expenses including remuneration of managing and technical directors	94,061	1	8
By transfer fees	48	3	6
Total ..	£94,109	5	2

That is all that the right-hand column has to tell the shareholders.

Is there a business man or a solicitor who, if presented with a profit and loss account like that by his accountants, would either pay his accountant or feel that he had been furnished with any information at all? What is the extent of the information? All those items, each of which is very important if the balance sheet is to form the basis of any judgment whatever, have been lumped into one sum. It is a strong illustration that such a presentation of a profit and loss account is wholly useless and certainly not the protection intended by s. 123 of the Companies Act.

I will take two other reports of companies of good standing as examples of this.

In the annual report of Y Co., Ltd., the right-hand column runs as follows:—

Profit and loss account for the year ended 20th February, 1934.

1934.	£	s.	d.
20th Feb.—By net profit on trading ..	115,013	10	0
By dividends on investments ..	450	0	0
	£115,463	10	0

In the report of the directors of Z Co., Ltd., submitted at the ordinary general meeting, the following is the entry on the credit side of the profit and loss account submitted:—

Profit from trading, dividends on shares in and interest on loans to subsidiary and associated companies (gross) income from trade and reserve investments, interest and sundry profits	£475,091	19	2

Lest I should be misunderstood, I again wish to make the fact clear that I have chosen these examples for no special reason except that they conform with the general practice of the business world in the interpretation of the obligation placed on companies by s. 123, and that this interpretation renders the section of practically no value.

What steps should be taken to make the s. 123 carry out its purpose which I submit is that shareholders should be shown the position fully and clearly?

First, it must be remembered there has not been a legal decision as to whether the form such as we find it is in compliance with s. 123. Solicitors may therefore fondly hope that some well-intentioned shareholder may take the question to the House of Lords. This is, however, extremely unlikely, as in a company yielding him dividends he will feel content and in one which is not in the best of health there would be no incentive altruistically to incur costs.

The legislature should define what exactly must go into a profit and loss account.

To have a lump sum set out appears on the face of it to be an extremely illusory guide. Parliament should declare that certainly the following and probably more information should be placed in the accounts, to make them comprehensive and informative, and have set out as separate items the amounts devoted to or estimated as spent of the following :—

(1) Investments.

Particularly each type of investment should be differentiated. It is extremely important for a person to arrive at the true state of affairs in a company to know to what extent investments are held (*a*) generally (*b*) in subsidiaries and in associated companies of the principal concern.

(2) Amounts paid in directors' fees.

(3) The amounts allowed for depreciation in (*a*) capital (*b*) plant and machinery (*c*) investments (*d*) book debts (*e*) goodwill and other fixed assets and, of course, any sale of capital which is not normally a transaction in the general way of trading by the Company.

There might be much more which ought to be included and which would not hamper companies in their trading. What precisely over and above these important items mentioned should be included would have to be carefully decided on evidence as to what would be the effect on trade generally, if they were included, and always safeguarding that important information should not be given to rival concerns.

This fact, however, is worthy of mention. It has been popularly proclaimed that disclosure above the bare minimum would be a severe blow to business enterprise. But recently there have been complaints that purely business concerns which should be trading under the Companies Acts have been trying to gain the public's confidence by trading under the Industrial and Provident Societies Acts. Under these Acts there is a statutory form of profit and loss account and trading account as well as a balance sheet providing for a certain minimum amount of information. It has been suggested for companies in the busy commercial world, whose activities extend over a great variety of undertakings, that their existing methods of book-keeping would render this impracticable. It must, however, be remembered that such an enormous concern as the Co-operative Wholesale Society is engaged in many phases of industry, yet its accounts have to take the statutory form laid down in the annual return prescribed by the Registrar of Friendly Societies. No serious difficulty has ever been experienced in consequence of their having had to adopt this practice. It does not seem to me that so much regulation as this is needed in the case of companies, but it does seem to be necessary for the legislature to amend the present section by declaring what exactly is the meaning of the protective clauses of the Companies Act.

Directors.

There is one other matter which has arisen in the process of growth of the limited liability system in which the Companies Act has tendered no protection. Many cases are known in which directors, by using the machinery of the Act, trade with limited liability, and time and time again with disastrous results to those who give credit to their companies. The companies are one after the other wound up. The directors, in so far as they suffer at all, suffer only to the extent of their limited liability. These directors do not, therefore, become bankrupt, but in a fashion similar to bankrupts before the passing of s. 142 they travel from company to company and whatever they touch with their un-Midas touch shortly afterwards becomes wound up.

" In many cases traders have been far too ready to give credit to private companies of which they know nothing, without making any sufficient enquiries as to the financial standing of the company or to the people who control it. To that extent it may be fairly said that the trouble lies at their own door. This has been particularly the case where manufacturers in periods of trade depression have been eager at any risk to find a sale for their goods."

I am strongly of opinion that something should be done to prevent these men who fortunately are the exception in business life, but who see in limited liability possibilities offering them unlimited scope.

An absolute prohibition against their acting as directors would be clearly unjust, but I suggest that no directors in any compulsory winding-up should be allowed to go on to the boards of new companies after that date without leave of the Registrar of Companies with a right of appeal to the Court.

The Wilfred Greene report in recommending the provisions of s. 142 referring to bankrupts, said this :—

" Having regard to the class of individuals concerned in the majority of cases we consider it essential that any breach of the provision which we recommend should be punishable by imprisonment."

As these directors are probably from the same class I suggest that the reward should be the same.

In this paper it may be thought that the promoter and the director have been attacked, but that is not so. It was said by the Wilfred Greene Committee :—

" The evidence satisfies us that in the great majority of companies in this country directors conscientiously endeavour to do their duty. The public interest excited when exceptions are brought to light is perhaps the best proof of their rarity."

The Committee were speaking after a great variety of evidence had been laid before them. Certainly opinion abroad, so far as it is echoed over here, is that integrity such as is found in England is not found elsewhere—particularly in Company Law, so that the examples I have given must be considered as exceptions and not the general rule.

Nevertheless, The Law Society as the head of the Solicitors' profession can and does perform a very useful service to the community. In form it is like one of the Guilds of the Middle Ages which some political thinkers would restore to all branches of national life and works not only for the interest it represents but through that for the public benefit.

I have suggested some matters in Company Law which are capable of improvement. Should the members of The Law Society consider them so serious as I do the attention of the Government should be drawn to them, for we, as Solicitors, have a duty to take the lead in securing that justice shall be maintained and the hardly earned savings of our citizens protected.

Mr. G. E. Hughes (Bath) congratulated Mr. Noble on his essentially constructive paper, and said that he had been concerned in the *Union Cold Storage* case. He considered that the period of seven days was ludicrously short, since notice of objection had to be in at least forty-eight hours before the meeting, thus leaving only five effective days, two of which might well be Saturday and Sunday. He suggested that in every case the minimum period of notice should be sixteen days. There was a general consensus of opinion that the present form of proxy was wrong. He thought that the form should at least provide one blank space, so that the names of directors could be struck out and the shareholder could put in the name of a person who represented his views. Secondly, he thought that if the question was one to which the answer was " Yes " or " No," the proxy should be in that form. There should also be a provision that such a proxy was not to be regarded as a power of attorney, which required a 10s. stamp. For all except the very smallest companies s. 61 was in practice a dead letter. When the company had many thousands of shareholders it cost a very great deal to get a list of their names and addresses and, indeed, the expense of the mere clerical work of organising any opposition was very great. The dissenting shareholder of every kind was fighting on the outer ring. A mechanism must be devised whereby he could obtain some form of statutory recognition. Shareholders' committees could be constituted, with a definite status and a definite right, and their expenses should come out of the funds of the company.

Mr. C. L. Nordon (London) emphasised the contradiction in terms involved in most so-called profit and loss accounts. He quoted, from the balance-sheet of the Union Cold Storage Company, the lines " By balance of working accounts and other receipts (after deducting certain losses of, and including dividends from, subsidiary companies—see statement in Directors' report £962,000." Rolled up in that item was the sum of £480,000 deducted from the gross total and given to a trust owned and controlled by the directors concerned. The shareholders were not told anything about that. The root of the whole trouble was that shareholders were kept in most profound ignorance until there was a crisis, and anyone who criticised the company was held up as an agitator. Prevention was far better than cure, and he hoped that some really effective action might be taken. The present Parliamentary Secretary to the Board of Trade, he observed, was a member of the Council of The Law Society.

He also drew attention to the number of persons who were prepared to register companies and draw up memoranda and articles of association. Every time he registered a company he found that his clients were approached with an offer to register any future company that might arise for £6 or £7, including the seal and statutory books. His clients were then apt to suggest to him that his bill was somewhat excessive! He read a letter which he had addressed to the Secretary of The Law Society last November on this subject, remarking that he had found companies so formed a constant source of trouble and expense, and pointing out that it was absurd to allow laymen to prepare such documents while they were liable to prosecution if they prepared leases or Land Registry transfers. He also read the secretary's reply, saying that

learned counsel had advised the company not to prosecute in these cases and suggesting that a good deal of the work was done for solicitors. Mr. Nordon had written again in December suggesting steps that the Council might take, e.g., issuing a warning, asking offenders to discontinue their practice, and promoting an Act of Parliament providing penalties for the preparation by unskilled persons of any legal document whatsoever if a charge was made. A limited company might be prosecuted for pretending to be a solicitor, and Mr. Nordon maintained that the preparation of these documents came precisely within that charge.

Mr. EMLEY said that he had managed to alarm some of his Chartered Accountant friends by telling them that the Stamp Act provided a penalty for any unqualified person who prepared documents under seal. He thought, however, that Chartered Accountants were not often offenders, as the qualified practitioners were always anxious to work in work the legal profession.

Mr. SEBAG COHEN, LL.B. (Sunderland), read the following paper :—

DEFECTS IN THE LAW RELATING TO INSURANCE AGAINST THIRD PARTY RISKS FOR MOTOR VEHICLES.

This paper deals with a section of the law which is of vital importance to those millions of people in this country who either own or drive a motor vehicle. As the number of such vehicles is constantly increasing, this branch of our law becomes of greater importance almost from day to day.

Moreover, it affects not only the motoring public, but also any person—even a non-motorist—who has the misfortune to be involved in a motor accident. In spite of the so-called compulsory insurance of motor vehicles, a large proportion of persons injured in motor accidents is unable, under the present law, to enforce the payment of damages either by the Motorist or by his Insurers.

At the beginning of July last, when I decided to read this paper, the law on this subject was in a most unsatisfactory state and urgently demanded drastic amendment. The law was then to a most unreasonable extent in favour of the Insurer, to the prejudice of both the motorist and the injured pedestrian. Since then, it has been amended by the Road Traffic Act, 1934, which received the Royal Assent on the 31st July.

This Act has made my task more difficult, but, as it does not go nearly far enough, it has made a public exposition of the defects in this branch of the law, more than ever necessary. Whilst it was obvious that the law as it stood before the Road Traffic Act, 1934, would be amended before long, the faint-hearted and quite inadequate changes effected by that Act may result in the public being deluded, for some time at any rate, into the belief that they are now reasonably protected.

On considering the law on this subject, one is amazed by the ease with which an Insurer is enabled by law—although he has issued a Certificate of Insurance in respect of a motor vehicle and has received payment of the premium—to avoid paying damages to a pedestrian or cyclist who has been injured in an accident in which the motor vehicle was involved even though there is clear evidence of negligence on the part of the driver of that vehicle.

It must be said that many Insurers apparently pay claims under their Policies as a matter of course, notwithstanding the actual legal position. Many injured persons, however, have found to their cost that some Insurers do appear to insist on their legal rights in such cases.

In order to appreciate the present legal position, one ought to consider briefly its historical development.

Before 1930 an owner of a motor vehicle was not required to insure at all against third party risks. If he injured another person, without any insurance being in force, that person had no effective remedy at all unless the tort-feasor was a man of substance. It was found in practice, however, that most uninsured owners of motor cars or motor cycles were men of straw who had not troubled to insure because they had very little to lose financially if an accident did occur.

The Road Traffic Act, 1930, altered this, and provided that it should not be lawful for any person to use, or permit any other person to use, a motor vehicle on a road unless there was in force in relation to such user a Policy of Insurance in respect of third-party risks complying with the requirements of that Act.

The following provisions of this Act are worthy of special note :—

(*a*) *The Policy has to be issued by an authorised Insurer.*

The main requirement as regards the financial status of the Insurer is that he must deposit £15,000 with the Accountant-General of the Supreme Court.

(*b*) *The Policy is required to insure "such person, persons or classes of persons as may be specified in the policy in respect of any liability which may be incurred by him or them in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle on a road."*

The Policy need not, however, cover liability in respect of the death of or bodily injury to persons being passengers or pillion riders on the vehicle in question.

In my view, for reasons which I shall explain later, this exception ought to be abolished.

(*c*) *The Insurer must deliver to the Insured a Certificate of Insurance.*

This is allied with a provision that before a Road Fund Licence can be obtained for the motor vehicle in question, this Certificate of Insurance must be produced to the Licensing Authority. This is, in my opinion, a fundamental principle of the whole scheme of compulsory insurance and, in effect, it places on the Insurer of any motor vehicle the responsibility for that motor vehicle being on a public road.

(*d*) *Section* 38 *of the Act* enacts that any condition in a Policy issued for the purposes of that Act, providing that no liability shall arise under the Policy or that any liability so arising shall cease in the event of some specified thing being done, or omitted to be done, after the happening of the event giving rise to a claim under the Policy, shall be of no effect in connection with claims by third parties in respect of the death of or bodily injury to any person caused by or arising out of the use of the vehicle on a road.

There is, however, a proviso to this section which enables the Insurer to include in the Policy a provision requiring the Insured to repay to him any money which the Insurer has had to pay by reason of s. 38.

In my submission s. 38 recognises, though unfortunately only to a limited extent, that :—

(*a*) As regards the public, a motor vehicle is a dangerous thing and is likely to cause death or bodily injury to innocent third parties ; and

(*b*) That the responsibility for that dangerous thing being on the road rests with the Insurer who, by issuing a Certificate of Insurance, has enabled the motor vehicle to obtain a Road Fund Licence and to use the public highways.

I cannot quite appreciate the reason which led Parliament to limit s. 38 to conditions regarding anything to be done or omitted after the happening of the accident. The result of this limitation was that any condition, whether reasonable or otherwise, as to anything to be done or omitted before or at the time of the happening of the accident still had the same force and effect as before the Act.

With the exception of fraud, it is difficult to see any difference in principle, as regards a third party, between a condition regarding something to be done *before* the accident and a condition as to something to be done *after* the accident. For some reason, however, Parliament enacted that in the one case the condition would still affect a third party in the same way as before the Act, whereas in the other case the condition was null and void so far as a third party was concerned.

There is little doubt that Parliament cannot have appreciated the full effect of the limitations placed on s. 38. Shortly, the effect has been to enable Insurers, if they so wish, to escape liability in a large proportion of motor accidents giving rise to claims by third parties. All sorts of defences, of various kinds and degrees, were still available for Insurers ; so that, even in a most serious accident, a third party maimed or crippled for life—or the widow or children of a person killed—entirely through the negligence of the driver of a motor vehicle, might well be unable to obtain any damages whatever, either from the motorist or his Insurer, notwithstanding the so-called compulsory insurance introduced by the 1930 Act.

Let us consider how s. 38 works in practice by considering the following examples dealing with conditions frequently found in Motor Insurance Policies :—

(1) *A condition that the motor vehicle must at all times be kept in roadworthy and efficient condition.*

In fact at the time when the accident happened this condition was broken because the brakes of the car were ineffective or because the treads of the tyres were worn off. The Insurer can escape liability and need not pay anything to a third party who has been injured through the negligence of the driver of the motor vehicle.

(2) *A condition that no more persons must be carried on the vehicle than the number which it was constructed to carry.*

In fact, when the accident happened, six persons were being carried in a four-seater motor car. The Insurer can similarly escape liability in this case.

(3) *A condition that no goods must be carried on the vehicle except personal luggage.*

Other goods were, in fact, being carried on the vehicle at the time when the accident occurred. The Insurer can escape liabioity even though his risk was not in any way increased by the breach of the condition.

(4) *A condition that the vehicle must not be used for any other purpose than conveying passengers by way of private hire.*

If, when the accident happened, the motor car was being used for an ordinary pleasure run by the Insured the Insurer can escape liability although pleasure riding is usually regarded as a smaller risk than private hiring.

(5) *A condition that the vehicle must not be used for towing another vehicle.*

If, when the accident happened, the vehicle was giving a tow gratuitously to a motor car which had broken down, the Insurer can similarly escape liability.

Other defects in the Insurance Contract which enabled an Insurance Company to escape liability to a third party were non-disclosure of material facts or material misrepresentation in the Proposal Form. Examples of these would be wrongly stating the purchase price for the motor vehicle or the age or occupation of the Insured (where these points are material in connection with the insurance); not disclosing or giving wrong particulars regarding previous accidents or previous claims.

All of you know that in every motor policy there is a number of conditions, usually in very small print, which hardly anyone ever reads. A breach of any one of these conditions, either before or at the time when the accident happened, was sufficient to enable the Insurer to escape liability to a third party.

Such was the unsatisfactory state of the law before the 1934 Act. The Legislature had, therefore, to decide how the law should be amended. I consider that the Legislature should have "gone the whole hog" and should have insisted on a Policy of comprehensive insurance as regards third parties, which would compel the Insurer to take the risk of any breach of conditions, whether before, at the time of or after the happening of the accident, and which would compel the Insurer to take the risk even of fraud so long as the Policy which he had issued was still current.

Anything short of this can only be regarded as unsatisfactory from the point of view of the public at large. There is little doubt that sooner or later the law will be brought to this stage. One must, however, regret the further delay that will occur as a result of the half-hearted attempt to cure the defects which is made by the 1934 Act.

It should be borne in mind that Parliament has a greater responsibility than usual in this respect because it is difficult to turn the light of publicity on the defects in the Third Party Insurance provisions of the Road Traffic Act because of Arbitration Clauses which are found in most Motor Insurance Policies and which result in disputes between an Insurance Company and its Insured being decided privately before an Arbitrator.

I am justified in saying that the risk both of breach of condition and of fraud should be thrown on the Insurer because, as I have already explained, the responsibility for a motor vehicle being on the road rests with the Insurer who has issued a Certificate of Insurance in respect of that vehicle.

The law has, for centuries, treated Insurers with an undue amount of tenderness and has conferred on them many privileges not enjoyed by other classes of people. The time has, however, now arrived when this policy must be fundamentally altered, at any rate so far as motor insurance is concerned. The Insurer must be made to realise that the issue of a Certificate of Insurance in respect of a motor vehicle carries with it a grave responsibility to the public at large; and that henceforth an Insurer must be prepared in any circumstances to compensate a member of the public who is injured through the negligent driving or management of that vehicle.

One need not, however, be sorry for the Insurers. They will not be any worse off even when these changes in the law have been made. All that will happen will be that they will increase the premiums they charge for Motor Policies to an extent that will be sufficient to cover the increased liability placed upon them. The extra cost will, therefore, really fall upon the motoring community. As they are the people who, in equity, ought to bear this additional expense, they will not have any real cause to complain.

Nor do I think that the extra charge for a motor Insurance to cover this additional risk should be at all high. In my experience I have found that a large proportion of Insurance Companies even now meet all claims under their Motor Policies as a matter of course, and do not seek to escape liability. For such Companies, therefore, the additional cost occasioned by the proposed change in the law will only be a nominal sum.

For any Insurer or Company who has hitherto made a practice of making a microscopic examination of the numerous conditions in a Motor Policy or of the numerous replies in the Proposal Form, with a view to seeing whether liability for a claim of a Third Party can be evaded because of the breach of some condition, the proposed change in the law may undoubtedly be a very considerable additional cost. Such Insurers will not, however, be able to charge higher premiums than the other Insurers. The suggested change in the law may, therefore, mean a considerable increase in the amount of motor business of some Insurers, with a corresponding decrease in that of others.

I know that there has been some doubt raised as to whether it is reasonable to enact that an Insurer shall be liable in respect of a Policy which he would never have issued if he had had truthful answers to the questions which he asked. My reply to this is:—

(*a*) That unless this is done the scheme of Third Party Insurance will not be complete;

(*b*) It *is* reasonable, having regard to the public interests involved and to the Insurer's responsibility for the vehicle being on the public roads; and

(*c*) The only adverse effect of making it complete will be an increase (probably a slight one) in the premiums charged for motor insurance policies.

I shall now consider, briefly, the amendments introduced by the 1934 Act.

Section 10 provides that if an Insurer has given a Certificate of Insurance he is liable to pay to a third party who obtains judgment against the Insured the amount due under the judgment. The Insurer is liable even though he may be entitled to avoid or cancel the Policy, unless the Insurance Certificate has been surrendered.

The Insurer is not liable under this section unless he had notice of the bringing of the proceedings in which the judgment was obtained, either before or within seven days after the commencement of those proceedings.

The effect of s. 10 is considerably reduced by sub-s. (3), which enables the Insurer to escape liability if, in an action commenced before, or within three months after, the commencement of the proceedings in which the judgment was given, he has obtained a declaration that, apart from any provision contained in the Policy, he is entitled to avoid it on the ground that it was obtained by the non-disclosure of a material fact or by a representation of fact which was false in some material particular. In sub-s. (5) there is a very wide definition of the word "material."

Section 12 provides that where the Insurer has delivered a Certificate of Insurance, so much of the Policy as purports to restrict the insurance by reference to any of the following matters shall be of no effect as regards third parties:—

(*a*) The age or physical or mental condition of persons driving the vehicle; or

(*b*) The condition of the vehicle; or

(*c*) The number of persons that the vehicle carries; or

(*d*) The weight or physical characteristics of the goods that the vehicle carries; or

(*e*) The times at which or the areas within which the vehicle is used; or

(*f*) The horse power or value of the vehicle; or

(*g*) The carrying on the vehicle of any particular apparatus; or

(*h*) The carrying on the vehicle of certain means of identification.

Section 12 goes a considerable way towards remedying the main defects that existed under the 1930 Act, as regards third parties. It is a pity that the Legislature, having gone so far, did not decide on a policy of "all-in" insurance, compelling the Insurer to take all the risks. It will be noted that there are still many restrictions in a policy which will continue to defeat the claims of third parties because they are not among the restrictions enumerated in s. 12. Moreover, the saving of the Insurer's rights to repudiate for non-disclosure or misrepresentation constitutes a serious flaw in the 1934 Act. Having gone so far, Parliament should have had the courage to go further and give adequate protection to innocent third parties who are injured in motor accidents.

The established principles of common law are of great antiquity, whereas motor vehicles are of recent growth. This may explain—though it does not excuse—the reluctance of the Legislature to give adequate protection to third parties. In this respect, however, age must accommodate itself to youth—and the sooner the better.

There are two further points in connection with the Road Traffic Acts that I wish to discuss briefly:—

(*a*) *The position of the passenger or pillion rider.*

Except in the case of a passenger being carried for reward or in pursuance of a contract of employment, the Acts do not require the insurance policy to cover liability in respect of the death of or bodily injury to a passenger (in which term I include a pillion rider) in a motor vehicle. The reason for this was, presumably, the maxim *volenti non fit injuria*. The passenger is getting a free ride and must take the risks incident to the same. It was, apparently, considered that whereas a pedestrian must be protected against injury through the negligent driving of a motor vehicle, protection was not needed for a passenger on the vehicle in question who had voluntarily undertaken the risk.

Whilst I cannot deny the force of this argument, I think that on the whole it will be as well to consider a passenger as being a third party for the purpose of compulsory insurance, just as the law regards him as a third party in the following ways :—

(*a*) He is given a right of action, for negligent driving, against the driver of the motor vehicle in which he is himself riding ;

(*b*) In a claim against the driver of another vehicle he is not defeated by the contributory negligence of the driver of his own vehicle.

Moreover, it should be remembered that if the passenger or pillion rider is killed or seriously injured, his dependants are sufferers from the negligence of the motor driver, and they, at any rate, did not voluntarily incur the risk.

The only adverse result of including passengers in the compulsory insurance scheme will be a small increase in motor insurance premiums, to cover the additional liability of insurers.

As there will be a reduction of 25 per cent. in the h.p. tax of motor cars and motor-cycles as from the 1st January next, this would seem to be an opportune time for placing on motorists as a whole the small additional burden which is necessary to protect the public at large from the negligence of some motorists.

The second point is one that should be considered for the reasonable protection of motorists themselves, and which does not directly affect non-motorists. I consider that under the Road Traffic Acts, 1930 and 1934, motorists are exposed to a very serious risk of financial ruin, that they are almost completely unaware of this risk, and that they are not sufficiently protected or warned against this very serious risk.

This arises because there are many cases in which a motorist is liable, under those Acts and his Insurance Policy, to refund to his Insurer moneys which the latter has paid to satisfy the claims of third parties. For instance, there is a proviso to s. 38 of the 1930 Act which permits a provision to be inserted in a Policy requiring the motorist to repay to his Insurer any moneys which the latter has paid to third parties. Section 38 avoids, as against third parties, a condition in the Policy regarding something to be done or omitted after the happening of the accident. A provision is, I think, inserted in practically every motor policy throwing back on the motorist himself the ultimate liability in respect of moneys payable to a third party and which would not have been payable by the Insurer if s. 38 had not been enacted.

As an example, an Underwriter issues a policy insuring X in respect of the latter's motor car, and there is a condition in the policy that X must give notice to the Underwriter of any accident which may give rise to a claim, within seven days after the happening of such accident. X is involved in an accident, but neglects to give notice of the accident to the Underwriter within the specified period. A third party, who is seriously injured in the accident, sues X and obtains judgment against him for a very large sum. The Underwriter pays this sum, as he is bound to do, because of s. 38. The Underwriter, however, demands from X the payment of the sum he has paid to the third party because there is a provision in the Policy stating that X shall repay to the Underwriter all sums paid by the Underwriter in respect of any claim under the Policy which the Underwriter would not have been liable to pay but for s. 38. X is bound to pay him this money. This is, of course, a hypothetical case, but is one which may very easily occur in practice.

Under the 1930 Act, however, the risk was perhaps not very great, as most conditions in motor policies relate to something to be done *before* the happening of the accident. Under the 1934 Act, however, the risk of the motorist having to reimburse the Insurer in respect of moneys paid out by the latter to third parties, has been very considerably increased, and is now a very serious matter for every motorist. The position under the 1934 Act may well be that the majority of motorists are risking financial ruin—with all that that may entail for their dependants as well as for themselves—every time they drive a motor vehicle or have their motor vehicle driven by any person for whose negligence they may be responsible. One must remember, in this connection, the growing tendency to award very large sums as damages in running-down cases.

The 1934 Act is indeed a greater " offender " in this respect than the Act of 1930, because, whilst s. 38 enabled the Insurer to recover from the motorist the additional liability incurred by the Insurer under that section *provided that this was mentioned in the Policy*, the 1934 Act enables the Insurer, *without even mentioning this right in the Policy*, to recover from the motorist any moneys which the former becomes liable to pay by reason of the provisions of the 1934 Act (see s. 10 (4) and proviso to s. 12).

This will undoubtedly mean that in a substantial proportion of motor accidents the Insurer will be entitled to recover from the motorist the moneys he has paid to a third party, even though there is no mention of this right to recoupment in the Policy itself.

This is a phase of motor insurance law of which the greater majority of motorists will not be aware and, in view of the prevalence of arbitration clauses in Motor Insurance Policies, it will take a considerable time for motorists to become aware of this unreasonable burden.

Motorists undoubtedly believe that the " Comprehensive " Policies issued by most Insurers give the motorist absolute and comprehensive cover. Actually, under the 1934 Act, this will not be the case. If the additional liability imposed on an Insurer by ss. 10 and 12 of the 1934 Act is to be borne by the Insurer himself without re-imbursement by his Insured, an express stipulation to this effect must be inserted in the Policy.

I do not think that Insurers as a whole are likely to insert such express stipulations except at the suggestion of some important body. I respectfully suggest that the Council of The Law Society should consider whether they should make representations on this subject in the proper quarters.

In any event, to protect motorists as a whole, it is desirable to have an early amendment in the Road Traffic Acts, either by relieving motorists from ultimate responsibility in respect of claims covered by those Acts or by providing that a motorist shall not bear this responsibility unless there is in his policy an adequate warning that under policies of that class the Insured is liable to refund to the Insurer any moneys the latter may pay in respect of a large proportion of claims by third parties. In my view, to be effective and adequate such warning must :—

(*a*) *Be printed in easily legible print, not smaller in size than any other print on the Policy.* This will enable the motorist to see it at a glance, because there is little doubt that not one motorist in a hundred reads right through his Policy, and

(*b*) *Be in plain words.* The obscure form in which the liability of the Insurer under s. 38 of the 1930 Act is usually thrown back on the motorist, cannot be understood by any motorist who has not had a legal training.

It will be readily appreciated, therefore, that the 1934 Act is unsatisfactory from the point of view of the general public and, even to a greater extent, from the point of view of the motorist.

A further defect in the Road Traffic Acts is that the deposit of £15,000 is quite insufficient security. This figure should either be substantially increased before a person or Company is allowed to become an " authorised Insurer " or it should be increased afterwards in proportion to the business done by the Insurer.

In conclusion, I may be allowed to commend the change in the law as to the effect of death in relation to causes of action, which has been effected by the Law Reform (Miscellaneous Provisions) Act, 1934.

Mr. BARRY O'BRIEN congratulated Mr. Cohen on his paper and hoped that the Minister of Transport would, on his return, have time to attend to the very serious matters that had been raised in that paper and his own.

Mr. F. C. STIGANT said that something must be done to fill in the gaps in the present system. If the published figures of insurance companies were considered it would be found that the tariff companies insuring against third-party risks were now only making a profit of some 4 per cent. If the ordinary law of contract were to be interfered with, so that they became liable on policies which they had been led to issue as a result of misrepresentation, there would have to be an increase in premium. Most of the reputable companies now paid on many policies where they need not, but if their liability were to become a matter of law the situation would be different. He thought that the penalties at present imposed by magistrates for driving an uninsured vehicle were far from adequate to the offence, and that the public and the insurance companies were entitled to expect that such offenders should be strenuously and drastically dealt with.

Legal Notes and News.

Honours and Appointments.

The King has been pleased to approve the appointment of The Hon. Mr. Justice ROCHE, one of the Judges of His Majesty's High Court of Justice (King's Bench Division), to be a Lord Justice of Appeal in the place of the late Sir Thomas Edward Scrutton. Sir Adair Roche, who was called to the Bar by the Inner Temple and was made a K.C. in 1912, has been a Judge of the King's Bench Division since 1917.

Sir Oswald Simpkin, K.C.B., C.B.E., has found himself obliged, by severe and persistent ill-health, to tender to the Lord Chancellor his resignation of the office of Public Trustee, and his lordship has accepted the resignation with very great regret. The Lord Chancellor has appointed Mr. H. E. FASS, C.B., O.B.E., a Principal Assistant Secretary to the Treasury, at present seconded for duty as Financial Secretary to the Sudan Government, to be Public Trustee in the place of Sir Oswald Simpkin.

The Lord Chancellor has appointed Mr. K. T. S. DOCKRAY to be the Registrar of Manchester County Court as from the 1st October, 1934.

The Lord Chancellor has appointed Mr. S. C. WARDEN to be the Registrar of Alcester and Redditch County Courts as from the 1st October, 1934.

Professional Announcements.

(2s. per line.)

THE SOLICITORS' ACCOUNTS RULES, 1935.

Solicitors who may have difficulty in complying with the new rules may solve the difficulty by writing in strict confidence to Accountant, Box. 4281, Solicitors' Journal, 29, Breams-buildings, E.C.4.

PRESENTATION TO JUDGE CRAWFORD.

A presentation to His Honour Judge Crawford on his retirement will be made in the Hall of the Inner Temple on Friday, 12th October, at 4.30, on behalf of the Registrars of the Courts of the Legal Profession.

LAND AND ESTATE TOPICS.

With reference to the auction of freehold ground rents secured on a portion of the Berners Estate on the north side of Oxford-street fixed for 22nd November, it was suggested at p. 668 of last week's issue that many of the securities might change hands before the public proceedings. We are informed by the Auctioneers, Messrs. Leslie, Marsh & Co., however, that it has been definitely decided that none of the lots shall be sold by private treaty prior to the auction.

Court Papers.

Supreme Court of Judicature.

ROTA OF REGISTRARS IN ATTENDANCE ON

DATE.	EMERGENCY ROTA.	APPEAL COURT No. 1.	GROUP I. MR. JUSTICE EVE. Witness. Part I.	MR. JUSTICE BENNETT. Witness. Part II.
	Mr.	Mr.	Mr.	Mr.
Oct. 8	Jones	More	*Hicks Beach	*Jones
„ 9	Ritchie	Hicks Beach	*Blaker	Hicks Beach
„ 10	Blaker	Andrews	*Jones	*Blaker
„ 11	More	Jones	*Hicks Beach	Jones
„ 12	Hicks Beach	Ritchie	Blaker	*Hicks Beach
„ 13	Andrews	Blaker	Jones	Blaker

	GROUP I. MR. JUSTICE CROSSMAN. Non-Witness.	MR. JUSTICE CLAUSON. Non-Witness.	GROUP II. MR. JUSTICE LUXMOORE. Witness. Part II.	MR. JUSTICE FARWELL. Witness. Part I.
	Mr.	Mr.	Mr.	Mr.
Oct. 8	Blaker	Andrews	More	*Ritchie
„ 9	Jones	More	*Ritchie	*Andrews
„ 10	Hicks Beach	Ritchie	Andrews	*More
„ 11	Blaker	Andrews	*More	Ritchie
„ 12	Jones	More	Ritchie	*Andrews
„ 13	Hicks Beach	Ritchie	Andrews	More

*The Registrar will be in Chambers on these days, and also on the days when the Court is not sitting.

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (30th June, 1932) 2%. Next London Stock Exchange Settlement, Thursday, 11th October, 1934.

	Div. Months.	Middle Price 3 Oct. 1934.	Flat Interest Yield. £ s. d.	†Approximate Yield with redemption £ s. d.
ENGLISH GOVERNMENT SECURITIES				
Consols 4% 1957 or after	FA	113¾	3 10 4	3 2 6
Consols 2½%	JAJO	81⅔	3 1 2	—
War Loan 3½% 1952 or after	JD	105½	3 6 4	3 2 0
Funding 4% Loan 1960-90	MN	115xd	3 9 7	3 2 11
Funding 3% Loan 1959-69	AO	99	3 0 7	3 0 11
Victory 4% Loan Av. life 29 years	MS	112¾	3 10 11	3 6 3
Conversion 5% Loan 1944-64	MN	118xd	4 4 9	2 14 5
Conversion 4½% Loan 1940-44	JJ	112	4 0 4	2 6 5
Conversion 3½% Loan 1961 or after	AO	104¾	3 6 10	3 4 7
Conversion 3% Loan 1948-53	MS	102¾	2 18 4	2 15 0
Conversion 2½% Loan 1944-49	AO	98¼	2 10 10	2 12 11
Local Loans 3% Stock 1912 or after	JAJO	94	3 3 10	—
Bank Stock	AO	368½xd	3 5 2	—
Guaranteed 2¾% Stock (Irish Land Act) 1933 or after	JJ	85	3 4 8	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	93	3 4 6	—
India 4½% 1950-55	MN	113	3 19 8	3 8 7
India 3½% 1931 or after	JAJO	96	3 12 11	—
India 3% 1948 or after	JAJO	84	3 11 5	—
Sudan 4½% 1939-73 Av. life 27 years	FA	117	3 16 11	3 10 3
Sudan 4% 1974 Red. in part after 1950	MN	111	3 12 1	3 2 4
Tanganyika 4% Guaranteed 1951-71	FA	112	3 11 5	3 0 9
Transvaal Government 3% Guaranteed 1923-53 Average life 12 years	MN	102xd	2 18 10	2 16 0
L.P.T.B.4½% "T.F.A." Stock 1942-72	JJ	111½	4 0 9	2 13 7
COLONIAL SECURITIES				
Australia (Commonw'th) 4% 1955-70	JJ	106	3 15 6	3 11 10
*Australia (C'mm'nw'th) 3¾% 1948-53	JD	102	3 13 6	3 11 4
Canada 4% 1953-58	MS	110	3 12 9	3 5 8
Natal 3% 1929-49	JJ	98	3 1 3	3 3 5
*New South Wales 3½% 1930-50	JJ	99	3 10 8	3 11 8
*New Zealand 3% 1945	AO	99	3 0 7	3 2 7
Nigeria 4% 1963	AO	109	3 13 5	3 10 0
Queensland 3½% 1950-70	JJ	100	3 10 0	3 10 0
South Africa 3½% 1953-73	JD	105	3 6 8	3 2 11
*Victoria 3½% 1929-49	AO	100	3 10 0	3 10 0
*W. Australia 3½% 1935-55	AO	99	3 10 8	3 11 5
CORPORATION STOCKS				
Birmingham 3% 1947 or after	JJ	93	3 4 6	—
Croydon 3% 1940-60	AO	98	3 1 3	3 2 4
Essex County 3½% 1952-72	JD	106	3 6 0	3 1 3
*Hull 3½% 1925-55	FA	102	3 8 8	—
Leeds 3% 1927 or after	JJ	92	3 5 3	—
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	104	3 7 4	—
London County 2½% Consolidated Stock after 1920 at option of Corp.	MJSD	79	3 3 3	—
London County 3% Consolidated Stock after 1920 at option of Corp.	MJSD	94	3 3 10	—
Manchester 3% 1941 or after	FA	92	3 5 3	—
Metropolitan Consd. 2½% 1920-49	MJSD	98	2 11 0	2 13 4
Metropolitan Water Board 3% "A" 1963-2003	AO	94	3 3 10	3 4 4
Do. do. 3% "B" 1934-2003	MS	95	3 3 2	3 3 7
Do. do. 3% "E" 1953-73	JJ	99	3 0 7	3 0 10
Middlesex County Council 4% 1952-72	MN	110xd	3 12 9	3 5 2
Do. do. 4½% 1950-70	MN	113xd	3 19 8	3 8 8
Nottingham 3% Irredeemable	MN	92xd	3 5 3	—
Sheffield Corp. 3½% 1968	JJ	105	3 6 8	3 5 1
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS				
Gt. Western Rly. 4% Debenture	JJ	109½	3 13 1	—
Gt. Western Rly. 4½% Debenture	JJ	119½	3 15 4	—
Gt. Western Rly. 5% Debenture	JJ	130	3 16 11	—
Gt. Western Rly. 5% Rent Charge	FA	128½	3 17 10	—
Gt. Western Rly. 5% Cons. Guaranteed	MA	126	3 19 4	—
Gt. Western Rly. 5% Preference	MA	112½	4 8 11	—
Southern Rly. 4% Debenture	JJ	109	3 13 5	—
Southern Rly. 4% Red. Deb. 1962-67	JJ	109½	3 13 1	3 9 4
Southern Rly. 5% Guaranteed	MA	125½	3 19 8	—
Southern Rly. 5% Preference	MA	112	4 9 3	—

*Not available to Trustees over par.
†In the case of Stocks at a premium, the yield with redemption has been calculated as at the earliest date; in the case of other Stocks, as at the latest date.

Where Help is Needed.

AN ACCOUNTANT AND EXECUTOR WRITES:
"Mrs. A. expressed a desire that under her Will some Charity of the nature of your own should benefit. I made enquiries in different quarters and had from you a copy of your Annual Report and Accounts. As a result I advised Mrs. A. to select your Association as one suitable for her benevolence.'

THE DISTRESSED GENTLEFOLKS' AID ASSOCIATION

(UNDER ROYAL PATRONAGE)

appeals for Legacies, Subscriptions and Donations.

SIR SELWYN FREMANTLE, C.S.I., C.I.E., *Chairman.*
J. HERBERT TWAMLEY, J.P., *Hon Treasurer.*
C. M. FINN, *Secretary.*

75, BROOK GREEN, LONDON, W.6.

The Solicitors' Journal.

BACK NUMBER RATES

	Per Copy, Post free.
Not more than 6 months old..	1s. 1d.
Over 6 months old, but under 18 months ..	1s. 6d.
Over 18 months old, but under 30 months..	2s. 0d.
Over 30 months old	2s. 6d.

29-31, BREAMS BUILDINGS, LONDON, E.C.4.

THE
PRINCESS ELIZABETH OF YORK HOSPITAL FOR CHILDREN

(FORMERLY EAST LONDON HOSPITAL FOR CHILDREN)

SHADWELL, LONDON, E.1

Earnestly requests the help of Solicitors when preparing Charitable Bequests.

LEGACIES

are a valued and much needed help in our great work.

This Hospital which is isolated from the natural sources of charity, has for over 70 years been serving the sick and suffering children of the East End of London, and during that period has treated over 1,400,000 little patients.

Patrons: THEIR MAJESTIES THE KING AND QUEEN.
Chairman: BRIG.-GENERAL SIR HILL CHILD, C.B., C.M.G., D.S.O., M.V.O.

ANNUAL REPORT and full particulars of the work gladly supplied by the Secretary, Mr. J. F. RUSSELL. (Phone: East 5068.)

THE SOLICITORS' JOURNAL

ESTABLISHED 1857. PUBLISHED WEEKLY.

Advertisement Rates

DISPLAYED ADVERTISEMENTS

Front Cover **20s.** per inch, Single Column width (2½ inches).
Other Pages **15s.** per inch, Single Column width (2½ inches). **£5** per Column (10 by 2½ inches).
Per Page Facing matter, **£15.** Other pages, **£12.** Half-page and Quarter-page, *pro rata.*

Auctioneers' Announcements **10s.** per inch, less 10 per cent. Single Column width (2½ inches).
Auctioneers' Cards Special Rates according to length of series.
Information Required / **Professional Announcements** **2s.** per line (average eight words).
Public Notices **1s. 6d.** per line (average eight words).

Special terms for a series in all cases.

RATES FOR SPECIAL NUMBERS BY AGREEMENT.

SMALL ADVERTISEMENTS

Appointments Wanted Thirty words, or less .. .. .. **5s.**
Per line after (average seven words) .. **1s.**
*Registration and Postage sent to Box No. **1s.**

Appointments Vacant Thirty words, or less .. .. .. **6s.**
Per line after (average seven words) .. **1s.**
*Registration and Postage sent to Box No. **1s.**

Articled Clerks .. Charges as "Appointments Vacant."
Practices and Partnerships for Sale or Wanted Charges as "Appointments Vacant."
Other Small Private Advertisements Charges as "Appointments Vacant."

**Replies received to BOX NUMBERS forwarded daily.*

N.B.—A special concession of three insertions for the price of two is made for advertisements under the above subjects.

The Proprietors reserve the right to refuse insertion without necessarily assigning any reason, or to vary the above rates.

Telegraph, Phone or Write your requirements to:

THE MANAGER, "THE SOLICITORS' JOURNAL," 29-31, BREAMS BUILDINGS, LONDON, E.C.4.

Telegrams: "Oyez, Fleet, London." Telephone: Holborn 1853.

Please mention "THE SOLICITORS' JOURNAL" when replying to Advertisements.

REQUIRED IMMEDIATELY.
To Purchase for Cash
A LARGE
ESTATE OF WEEKLY PROPERTIES
500 to 600 HOUSES
Freehold or Long Leasehold.
Blocks of not less than 25 houses entertained to make up the required estate. Full particulars to
JACKSON STOPS,
14, Curzon Street, W.1.

Telephone: HOLBORN 0584 (3 lines).
WEATHERALL, GREEN AND SMITH,
Surveyors, Valuers, Auctioneers, and Estate Agents.
22, CHANCERY LANE, W.C.2.
SALES BY AUCTION,
VALUERS FOR ESTATE DUTY OF REAL ESTATE AND FURNITURE.
RATING SURVEYORS. COMPENSATION VALUERS.
VALUERS OF LICENSED PROPERTY.

ESTABLISHED 1852.
DRIVERS & NORRIS,
F.A.I.,
AUCTIONEERS, VALUERS,
SURVEYORS, HOUSE, ESTATE
AND FACTORY AGENTS,
407, HOLLOWAY RD., N.7.
Telegrams: "DRIVERS, HOLLOWAY." 'Phones: NORTH 1503, 1504 & 1131.

PERIODICAL SALES.
ESTABLISHED 1843.
H. E. FOSTER & CRANFIELD
conduct PERIODICAL SALES of
REVERSIONS (Absolute and Contingent),
LIFE INTERESTS and ANNUITIES,
LIFE POLICIES,
Shares and Debentures,
Mortgage Debts and Bonds, and
Kindred Interests,
on the FIRST and THIRD THURSDAYS in each month throughout the year, at THE LONDON AUCTION MART, 155, Queen Victoria-street, E.C.4.
Offices: 6, Poultry, London, E.C.2. Telegrams: "Invariably, Stock, London." Tel. No. City 1451 (3 lines).

PERIODICAL PROPERTY AUCTIONS.
H. E. FOSTER & CRANFIELD
beg to announce that their PROPERTY AUCTIONS will be held at THE LONDON AUCTION MART, 155, Queen Victoria-street, E.C.4.
Vendors, solicitors and trustees having properties for sale are respectfully invited to communicate with the Auctioneers, at their Offices, 6, Poultry, London, E.C.2. Telegrams: "Invariably, Stock, London." Tel. No. City 1451 (3 lines).

H. J. BLISS & SONS
MONTHLY SALES at THE AUCTION MART,
Special attention also given to
Valuations; Specifications; Dilapidations; Management of House Property; Compensation Claims; Sales by Private Treaty.
106, Cheapside, E.C.2 & 164, Bethnal Green Rd., E.2.

HARRODS LTD.
62-64, BROMPTON ROAD, S.W.1.
'Phone (Estate Office only), . Ken. 1490.

At a Very Moderate Reserve.
ALBYN LODGE,
3, ADDISON ROAD, KENSINGTON, W.14.
Rurally situated in unspoilt Residential Locality. Handy for Holland Park Tube Stations and 'Bus Routes.
Well-appointed
COUNTRY STYLE TOWN RESIDENCE
Facing West, approached by short Drive, screened from the road.
Spacious Entrance Hall, Cloak Room, 3 Fine Reception, Wide Verandah, 10 Bed and Dressing, 3 Bath, Ample Offices, Butler's Bed Room.
Central Heating. Independent Hot Water System. Service Lift. Electric Light and Power.
Garage for Three Cars with Loft over.
BEAUTIFULLY TIMBERED OLD WORLD GARDEN. Profusion of fine Old Trees and Shrubs, Ornamental Lawns, Flower Beds and Borders,
in all about
ONE AND THREE-QUARTER ACRES.
The Property is held on a direct Lease from the Ilchester Estate, having nearly 35 years unexpired. Ground Rent £130 per annum.
VACANT POSSESSION.
For SALE by AUCTION at
HARRODS ESTATE SALE ROOMS, S.W.1.
On 16th OCTOBER, at 2.30 p.m.
Solicitors: Messrs. Lee Ockerby & Co., 3 and 4, Wardrobe-place, Doctors' Commons, E.C.4.
Auctioneers: Harrods, Ltd., 62-64, Brompton-road, S.W.1.

Exceptionally Low Reserve.
80, ELM PARK GARDENS, S.W.10.
Near South Kensington Station. Facing East and West. Direct access to Gardens.
AN EXCELLENT
FAMILY RESIDENCE.
Nine bed, 2 Dressing Rooms, 3 Reception, Bath Room. Good Offices.
Independent Hot Water Boiler.
Lavatory Basins (h. & C.) in Six Bed Rooms.
VACANT POSSESSION.
Held on Lease, having about 39½ years unexpired at the Ground Rent of £25 per annum, and Garden Rate £3 per annum.
For SALE by AUCTION at
HARRODS ESTATE SALE ROOMS, S.W.1.
On 9th OCTOBER, at 2.30 p.m.
Solicitors: Messrs. Holmes, Son & Pott, Capel House, New Broad-street, E.C.2.
Auctioneers: Harrods, Ltd., 62-64, Brompton-road, S.W.1.

W. & H. PEACOCK, F.A.I.,
6, DAME ALICE STREET, BEDFORD.
Telephone: 2333. (Close to G.P.O.)
Auctioneers, House and Estate Agents, Valuers and Surveyors.

FIELD & SONS
C. ROLAND FIELD, P.P.A.I., F.S.I.,
J. DONALD FIELD, M.A., LL.B., F.S.I., F.A.I.
(Established over 100 years.)
CHARTERED SURVEYORS,
AUCTIONEERS, VALUERS,
LAND & ESTATE AGENTS.
AUCTION SALES at the MART MONTHLY
OFFICES:
54, BOROUGH HIGH ST., LONDON BRIDGE, S.E.1.
PALACE CHAMBERS, WESTMINSTER, S.W.1.

KNIGHT, FRANK & RUTLEY'S SALE ROOMS
FOR
JEWELS, FAMILY PLATE, PICTURES, FURNITURE, CHINA,
And all classes of Valuable Property.
SALES IN COUNTRY HOUSES. FIRE VALUATIONS.
Special Estate Rooms for Auctions of Real Property and Investments.
20, HANOVER SQUARE, LONDON, W.1.

30, CHARLES STREET,
BERKELEY SQUARE, W.1.
A MEDIUM-SIZED, STONE-FRONTED HOUSE of unusual character.
DOUBLE-FRONTED, COMPACTLY PLANNED.
Hall, 4 reception rooms, 9 bed and dressing rooms, 3 bath rooms, white tiled offices.
2 BED ROOMS, DRESSING ROOM AND 2 BATH ROOMS ON PRINCIPAL BED-ROOM FLOOR.
Central heating. Independent hot water system. Dinner lift.
Lease about 31½ years.
Ground-rent £100 p.a.
HAMPTON & SONS
Will SELL the above by AUCTION at the St. James's Estate Rooms, 20, St. James's-square, S.W.1, on TUESDAY, 30th OCTOBER next, at 2.30 p.m. (unless previously sold). Solicitors: Messrs. Coward, Chance and Co., 24, Mincing-lane, E.C.3.
Particulars from the Auctioneers, 20, St. James's-square, S.W.1.

SOUND FREEHOLD INVESTMENTS.
TOOTING, BECKENHAM, MERTON, SUTTON, WANDSWORTH and BALHAM.
Messrs.
JOHN G. DEAN & CO.
Will SELL by AUCTION, in 24 lots, at MART, E.C. on THURSDAY, 11th October,
AN ESTATE OF
94 FREEHOLD & 4 LEASEHOLD HOUSES & SHOPS, producing
PER £4,519 11s. 8d. ANNUM.
Particulars and conditions of sale may be obtained from Messrs. Guillaume & Sons, 1, Salisbury-square, E.C.4, and from the Auctioneers' Offices, 196, High-road, Balham, S.W.12, and 139, St. James's-road, Wandsworth Common, S.W.17.

BECKENHAM, CHEAM, MITCHAM & PURLEY.
Messrs.
JOHN G. DEAN & CO.
Will SELL by AUCTION, in 6 lots, at MART, E.C., on THURSDAY, 11th October,
38 modern
FREEHOLD HOUSES,
producing
PER £2,772 10s. ANNUM.
Particulars and conditions of sale may be obtained from John Bransbury, Esq., 3, Pancras-lane, E.C.4, and from the Auctioneers, as above.

SALTER, REX & CO.
Chartered Surveyors, Auctioneers & Valuers
311, KENTISH TOWN ROAD, N.W.5, and 121, CHEAPSIDE, E.C.2.
'Phones: GULLIVER 1085 (4 lns.) & NATIONAL 8394 (2 lines).

OFFICES TO BE LET
In the VICINITY of the LAW COURTS.
APPLY:
HAROLD WILLIAMS,
HOLLIDAY & PARTNERS,
46 & 47, CHANCERY LANE, W.C.2. Holborn 5365.

Telephone: HOLBORN 0602.
EDE & RAVENSCROFT
FOUNDED IN THE REIGN OF WILLIAM & MARY, 1689.
Robe Makers — Court Tailors
BY APPOINTMENT.
TAILORING—SOLICITORS' GOWNS
Wigs for Registrars, Town Clerks and Coroners.
93 & 94, CHANCERY LANE, LONDON, W.C.2.

Printed in Great Britain by THE SOLICITORS' LAW STATIONERY SOCIETY, LTD., at "Oyez" House, Fetter Lane, London, E.C.4, and Published at 29, Breams Buildings, E.C.4 ('Phone: Holborn 1853). Agents—The United States and Canada: The Carswell Co., Ltd., 145-149, Adelaide Street West, Toronto 2, Canada; India: Higginbothams, Publishers, Mount Road, Madras; Australia and New Zealand: "The Times," 255a, George Street, Sydney, N.S.W. Saturday, 6th October, 1934.